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No. 15421

IN THE

United States Court of Appeals
FOR THE NINTH CIRCUIT

JOSEPH STEVENS,

vs.

appellee

JOSEPH ROBERT DOLLES, et al., Secretary of State

appellee

JOSEPH STEVENS,

vs.

appellee

JOSEPH ROBERT DOLLES, et al., Secretary of State

appellee

APPELLEE'S BRIEF,

LEONARD E. WYMAN,

Attorney at Law, Appellee

SHIRLEY A. JOYNER,

Attorney at Law, Appellee

Counsel for Civil Division

JOSEPH ROBERT DOLLES, et al.

Attorneys at Law, Appellee

200 Federal Building

San Francisco 12, California

Attorneys for Appellee

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U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT

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No. 15421.
IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

NORIO KIYAMA,

Appellant,

vs.

JOHN FOSTER DULLES, as Secretary of State,

Appellee.

MIYOKO KIYAMA,

Appellant,

vs.

JOHN FOSTER DULLES, as Secretary of State,

Appellee.

APPELLEE'S BRIEF.

Statement of Jurisdiction.

On September 15, 1949, appellants filed their Complaint which charged that they had been denied a right and privilege as a national of the United States. [Tr. of R. 4.]* On December 16, 1949, their Complaints were severed and on December 21, 1949, appellee's Answers were filed. [Tr. of R. 6.] On June 2, 1950, Amended Answers to both Complaints were filed. [Tr. of R. 7-11.]

The cases were consolidated for trial which began July 10, 1956 and ended July 13, 1956. [Tr. of R. 16, 28.] On August 27, 1956, District Judge William M. Byrne rendered judgment in each case for the appellee. [Tr. of R. 27, 37.] Timely notices of appeal were filed on October 24, 1956. [Tr. of R. 38, 39.]

*Tr. of R. refers to the Clerk's Transcript of Record. R. T. refers to the Reporter's Transcript of Proceedings.

The trial court had jurisdiction under Title 8 United States Code, §903. This court has jurisdiction of the appeal pursuant to the provisions of Title 28 U. S. C. §1291.

Statement of the Case.

Appellant Norio Kiyama was born on May 3, 1915 at Los Angeles, California, of Japanese parents, thus acquiring nationality of both the United States and of Japan. [R. T. 164; Tr. of R. 16.] He was brought to Japan in 1922 and left there to receive his schooling until 1931, at which time he returned to the United States when he was 16 years old. [R. T. 165; Tr. of R. 17.]

Plaintiff Miyoko Adachi Kiyama was born at Manhattan Beach, California, on October 21, 1921, of Japanese parents. [R. T. 44; Tr. of R. 28; Ex. T, R. T. 53, 106.] During 1928 she was taken to Japan and remained there until some time during 1938. [R. T. 45; Ex. W, R. T. 100, 106; Tr. of R. 29.]

Miyoko Adachi married Norio Kiyama in December 1938. [R. T. 47.] Neither Norio nor Miyoko Kiyama ever registered to vote in an American election. [Ex. A, R. T. 196-197; Ex. T, R. T. 53, 106.] The birth of their two children in 1939 and 1941 were registered with the Japanese Consulate in order that Japanese citizenship be obtained for the children. [R. T. 126-127.]

On April 29, 1942 the appellants, while residents of California, were evacuated along with other persons of Japanese descent. [R. T. 167; Tr. of R. 17, 29.] Appellants were first sent to the Santa Anita Assembly Center at Arcadia, California where they remained until about October 18, 1942, at which time they were transferred to the Gila River Relocation Center, Gila River, Arizona. [Tr. of R. 17, 29; R. T. 167; Ex. U, R. T. 56, 106.]

While appellants were at Gila River Relocation Center from October 1942 to October, 1943, the Center operated, except for the inconveniences resulting from detention, in much the same fashion as a community outside of the Center. [R. T. 226-246.] Community Government was established and in operation. There was full employment. [R. T. 245-246.] Medical facilities were adequate. [R. T. 235.] Educational and recreational facilities were provided. [R. T. 226-229.] The conditions existing at Gila River Relocation Center were markedly different from those existing at Tule Lake, as described in *Acheson v. Murakami*, 176 F. 2d 953 (9th Cir., 1949). [R. T. 244-245, 307.] Gila River was relatively peaceful. There were few, if any, disturbances such as those which prevailed at Tule Lake. [R. T. 27, 34, 90, 236, 307.]

During 1943, the evacuees at Gila River Relocation Center performed many services for the United States war effort. The Japanese evacuees worked in a camouflage net factory that was operated by the Army. [R. T. 232.] Evacuees volunteered for an army language school. [R. T. 236.] Many of the evacuees at Gila River volunteered for military service. [R. T. 236.] The evacuees constructed a memorial to honor the Japanese who had enlisted in the United States Army. [R. T. 237.] The evacuees also worked in a model ship factory whose products aided the identification of warships of Germany and Japan. [R. T. 240-241.]

At Gila River, 9,746 persons registered for the Army Enlistment and WRA Leave-Clearance Registration Program in 1943. Of these registrants, 8,823 answered "Yes" to Question 28, which asked whether the registrant was willing to defend the United States and forswear allegiance to foreign forces. [Pltf. Ex. 1, p. 199, R. T. 24-25.]

On February 12, 1943, appellant Norio Kiyama signed a form entitled "Statement of United States Citizen of Japanese Ancestry." In executing questions 27 and 28 of this form, appellant stated that he was unwilling to serve in the Armed Forces of the United States and was unwilling to swear unqualified allegiance to the United States and to faithfully defend it from attack by foreign forces. [Tr. of R. 17-18; Ex. A, R. T. 197.] On the same date, appellant also signed a form entitled "Application for Leave Clearance". In executing this form plaintiff indicated therein that he did not desire employment in any part of the United States. [Tr. of R. 18; Ex. B, R. T. 200.]

On March 1, 1943 appellant Miyoko Kiyama also signed a form entitled "Application For Leave Clearance". On this form said appellant indicated that she desired no employment and would not take employment in any part of the United States. She also stated in questions 27 and 28 that she was unwilling to volunteer for the Army Nurse Corps or the Woman's Army Auxiliary Corps and was unwilling to swear unqualified allegiance to the United States of America and to forswear allegiance to the Japanese Emperor. [Tr. of R. 29-30; Ex. T, R. T. 53, 106.]

On June 30, 1943, appellant Miyoko Kiyama signed a form entitled "Individual Request for Repatriation". In executing this form the appellant requested that she be repatriated to Japan. [Tr. of R. 30; Ex. U, R. T. 56, 106.] On June 31, 1943 Norio Kiyama signed two forms entitled "Individual Request for Repatriation" and "Request for Repatriation—Family Summary". In executing these forms plaintiff requested that he and his family be repatriated to Japan. [Tr. of R. 18-19; Ex. C, R. T. 203.] On July 28, 1943, Miyoko Kiyama again executed an

“Individual Request for Repatriation.” [Tr. of R. 30; Ex. V, R. T. 106.]

During October 1943 the appellants were transferred to the Tule Lake Segregation Center. Before being transferred, the appellants were given an opportunity to change their “no-no” answers to questions 27 and 28. [Tr. of R. 19, 31; R. T. 83, 199.] The appellants failed to change their answers, knowing that if they did not do so, they would be transferred to Tule Lake. [Tr. of R. 19, 31; R. T. 219-220.]

After being transferred to the Tule Lake Segregation Center, appellant Norio Kiyama became a member of the Hokoku Seinen-dan, a militant pro-Japanese organization. Appellant Miyoko Kiyama became a member of the Hokoku Joshi Seinen-dan, which was the counterpart of the men’s organization. [Tr. of R. 20-32; Ex. F, R. T. 275-276; Ex. W, R. T. 100, 106.]

On April 27, 1944, Norio Kiyama signed a form entitled “Request for Repatriation—Family Summary”. On this form appellant indicated a desire that he and the members of his immediate family be repatriated as a family group. [Ex. E, R. T. 31, 269.]

On October 15, 1944, both Norio and Miyoko Kiyama wrote letters to the Attorney General of the United States requesting advice as to what legal steps should be taken to renounce their American citizenship and the citizenship of their family. [Ex. X, R. T. 61, 106; Ex. G, R. T. 279.]

On November 10, 1944, both appellants executed and submitted to the Attorney General a form entitled “Application for Permission to Renounce United States Nationality”, in which they requested that their citizenship

be renounced. [Tr. of R. 21, 32; Ex. H, R. T. 282; Ex. Y, R. T. 112.] On November 14, 1944, appellant Norio Kiyama wrote a letter to the Attorney General seeking to add to his said Application by stating that he had had military training while in Japan for three years under the Japanese Army. [Tr. of R. 21; Ex. AA; R. T. 116.]

On December 7, 1944, a hearing on Norio Kiyama's renunciation of citizenship was held before John L. Burling, Hearing Officer. At this hearing appellant stated, among other things, that he desired to renounce his American citizenship; that he signed the application to renounce freely and voluntarily; that before Pearl Harbor his loyalty was to Japan, and that his loyalty was still with Japan; that he hoped and believed that Japan would win the war; that "The spirit of Japan is so strong it will be able to win"; and that "I think the Emperor is the highest power and I worship him". [Ex. J, R. T. 284-288.]

On December 7, 1944, Miyoko Kiyama's renunciation of citizenship hearing was held. At this hearing she stated, among other things, that she signed the application to renounce citizenship freely and voluntarily, that when she returned to this country in 1938 her loyalty was to Japan rather than to the United States; that before December 7, 1941, her loyalty was with Japan; that her loyalty still was with Japan; and that she would like to see Japan win the war. [Ex. Z, R. T. 113.]

Norio Kiyama renounced his citizenship at Tule Lake on December 13, 1944 by signing a form entitled "Renunciation of United States Nationality". Appellant Miyoko Kiyama renounced her citizenship on December 12, 1944. On December 23, 1944 these renunciations were approved by the Attorney General as not being con-

trary to the interests of national defense. [Tr. of R. 22, 33; Ex. K, R. T. 288; Ex. AA, R. T. 116.]

On December 27, 1944, Norio Kiyama was removed from Tule Lake and interned at the Internment Camp at Santa Fe, New Mexico. Said appellant was designated as one of the seventy leaders in the reign of terror in Tule Lake, referred to in Finding of Fact 35 in *Murakami v. Acheson*, 176 F. 2d 953 (9th Cir., 1949). [Ex. L, R. T. 289.]

On October 19, 1945, Norio Kiyama signed a form letter entitled "Petition for Repatriation" in which he requested that his family be repatriated to Japan. [Ex. P, R. T. 296.] On or about March 1, 1945, Norio Kiyama signed and submitted to the Attorney General a letter in which, among other things, he requested that he be furnished with a certificate of expatriation. [Ex. Q, R. T. 297.]

On September 27, 1954, while still at Santa Fe Internment Camp, he signed a form entitled "Application for Repatriation", on which he indicated a desire to be repatriated to Japan unconditionally and whether or not his family accompanied him. On this form he stated, among other things: "I have been always loyal to Japan during the war and I have no intention to change my loyalty to any other country at this time." [Ex. R, R. T. 299.]

On or about December 28, 1945, appellants Norio and Miyoko Kiyama voluntarily left the United States and returned to Japan. They remained in Japan from sometime during 1946 until sometime during 1950 at which time they returned to the United States on a Certificate of Identity for the purpose of prosecuting this action. [Tr. of R. 23, 33.]

ARGUMENT.

Preliminary Statement.

Appellants have adopted the general legal position set forth in the appellant's brief in *Yamamoto v. Dulles*, No. 15422, and have merely summarized their contentions herein. Therefore, appellee has prepared his argument upon the assumption that all the arguments set forth in the *Yamamoto* brief, where possibly applicable, are made herein. If, in some instances, this is not the case, appellee regrets the resulting surplusage of argument.

I.

Presumption of Involuntary Renunciation.

Because of the oppressive conditions prevailing at Tule Lake (see *Acheson v. Murakami*, 176 F. 2d 953 (9th Cir., 1949)), this Court has held that a rebuttable presumption of involuntary renunciation exists for those renunciants confined at Tule Lake. *McGrath v. Abo*, 186 F. 2d 766, 773 (9th Cir., 1951). When substantial evidence rebutting the presumption is introduced, the burden of proving the voluntary nature of the renunciation is upon the plaintiff. *Ibid.* Appellants herein contend that the Government's evidence was not sufficient to overcome the presumption.

First, appellants argue that their Tule Lake activities should be ignored because they "did nothing different than did the thousands of others who renounced and engaged in activity before the renunciation." This argument fails to take into account what this Court stated in *McGrath v. Abo*, *supra*, namely, that "the record shows the certainty that many of the 4315 plaintiffs who voluntarily renounced were disloyal to the United States" and that of the Kibei,

“persons sent by their parents to Japan for their education, . . . some were ‘permanently pro Japanese.’” Appellants do not, and cannot, point to evidence in the record which shows that their activities were solely like those of the loyal renunciants and unlike those of the disloyal. Consequently, there is more than ample justification for considering their conduct at the place of, and near in time to, their renunciation.

Next, appellants would also have us disregard their pre-Tule Lake activities because of the goadings of powerful agitators and the oppressiveness of imprisonment at Gila River. However, no presumption of coerced activity exists except with respect to Tule Lake. *McGrath v. Abo*, 186 F. 2d *supra* at page 774. As set forth in the Statement of the Case, conditions at Gila River were entirely different than at Tule Lake. Moreover, 8,823 out of 9,746 registrants were able to express their loyalty to the United States by a “yes” answer to Question 28, and confinement of the majority did not prevent them from contributing to the war effort of the United States. Thus, appellants’ minority action of giving a “no” answer would appear to be significant. A similar “no” answer in *Murakami v. Dulles*, 221 F. 2d 588, 589 (9th Cir., 1955), evidently was the basis for sustaining a trial court’s finding that it refused to believe the testimony of a renunciant.

Moreover, appellants were given the opportunity to change their “no” answers prior to removal to Tule Lake. [Tr. of R. 19, 31; R. T. 199, 83.] They did not do so, however, because they felt they would be “sort of ostracized by the people at the camp.” [R. T. 83-84, 199.] The desire of approval by a minority group which had expressed disloyalty to the United States and which had

wanted segregation from the “yes-yeses”, also would appear to warrant consideration.

Next, appellants contend that their post-Tule Lake activities are not sufficient to overcome the presumption of involuntary renunciation, but do so without argument. (The arguments made in the *Yamamoto* brief are not applicable to the Kiyamas.) These activities consisted of requesting repatriation and of voluntarily returning to Japan after the war was over. More than silent argument is needed to establish that such activities are not helpful indicia of voluntary renunciation.

In *McGrath v. Abo*, 186 F. 2d *supra* at page 774, this Court stated that certain proposed evidence of the Government would overcome the presumption afforded Tule Lake renunciants. The offers of proof therein consisted of facts such as that renunciants had spent their formative years in Japan, had voluntarily returned to Japan subsequent to renunciation, had been active members of pro-Japanese groups at Tule Lake, had applied for repatriation prior to renunciation, had answered Question 28 in the negative, or had otherwise demonstrated that their renunciation was voluntary. In the present cases, *all* such factors were present with respect to both appellants, as is set forth in the Statement of the Case. Thus, the evidence of the appellee would seem to be sufficient to overcome the *Abo* presumption.

II.

Burden of Proof.

It is contended that the trial court erroneously placed the burden of proving the involuntary nature of renunciation upon the appellants. Considerable time is devoted to arguing that *Gonzales v. Landon*, 350 U. S. 920, established a rule contrary to that announced in *McGrath v. Abo*, 186 F. 2d 766, *supra*. However, appellants admit that their identical argument was rejected in *Nishikawa v. Dulles*, 235 F. 2d 135, 141 (9th Cir., 1956). If *Nishikawa* is in point, there seems little point in our arguing the matter much further.

In *Nishikawa*, as in the present cases, the ground of expatriation was pleaded in the Complaint and was admitted in the Answer, thus being proved conclusively. [Tr. of R. 3, 8, 10.] And, as in *Nishikawa*, the ground of expatriation (here, renunciation) would seem to require no mental element, or if so, only that the act be knowingly done. In any event, each of the appellants admitted at the trial that they knew the meaning of their act of renunciation, *i.e.*, that their citizenship would be taken away. [R. T. 113, 116, 283, 288.]

In criminal cases, where the burden on the Government is much greater even than the "clear and convincing" evidence rule, the Government is not required to prove that confessions are voluntary, even though confessions are carefully scrutinized by the courts.

Rhodes v. United States, 224 F. 2d 348 (5th Cir., 1955);

Hartzell v. United States, 72 F. 2d 569 (8th Cir., 1934);

Ah Fook Chang v. United States, 91 F. 2d 805 (9th Cir., 1937);

Gray v. United States, 9 F. 2d 337 (9th Cir., 1926);

Murphy v. United States, 285 Fed. 801 (7th Cir., 1923).

No greater burden should be upon the Government in a civil case; thus, proof that the act of expatriation was knowingly made should be more than sufficient to sustain the Government's burden of proof on this point.

As appellants have pointed out, however, the *Nishikawa* case is before the Supreme Court, and appellee is informed that reargument therein has been scheduled for next year. Even if that Court should decide that the burden of proving voluntary renunciation is upon the Government, appellee submits that that burden has been sustained here.

The trial court did not merely find that appellants had not sustained their burden of proving voluntary renunciation; the court went much further and made affirmative findings as to both appellants as follows:

"It is not true, as alleged in plaintiff's Complaint, that plaintiff's renunciation of United States nationality was the result of coercion, fears, confusion and mistake; nor is it true, as alleged, that such renunciation was not his free and voluntary act.

"It is true that plaintiff's renunciation of United States nationality was his free and voluntary act."
[Tr. of R. 23-24, 34.]

Thus the language of the findings demonstrates that the court did not merely conclude that appellants had not

sustained their burden, but specifically found that the facts were contrary to their contention. All doubt as to this matter is dispelled by the court's findings that (1) it did not believe the testimony of either appellant; (2) that their sympathies and loyalties lay with Japan; (3) that before, during, and after renunciation, appellants desired to be repatriated to Japan. [Tr. of R. 19, 24, 31, 34; see also R. T. 323, 324, 326; *cf.* R. T. 125-127.]

The primary evidence of the appellants, aside from the *Abo* presumption, on the crucial question of voluntary renunciation, came from their own lips. This evidence the trial court did not believe, and it is proper for a court to conclude that the truth lies just the opposite of testimony given by witnesses a court deems untrustworthy. *Nishikawa v. United States*, 235 F. 2d *supra* at p. 140. In any event, the documentary evidence of the Government showing the appellants' persistent, continuous, and overt expressions of disloyalty to the United States, and desire to return to Japan, coupled with the court's disbelief of the appellant's present version of their activities, constituted clear and convincing proof, if such be necessary, of the voluntary nature of their renunciation. Since such was the evidence, and since the court specifically found that the renunciations were voluntary, it is immaterial upon whom the trial court considered the burden of proof. Such an erroneous conclusion of law would be harmless error (*Craig-Giles Iron Co. v. Brownlee*, 272 Fed. 74 (4th Cir., 1921), even if the doctrine of *Gonzales v. Landon*, *supra*, be held to apply to cases of this type.

III.

Findings of Fact.

Appellants contend that the findings of fact are not supported by sufficient evidence. The Statement of the Case sets forth the evidence upon which the Government relied at the trial, and it seems unnecessary to repeat such evidence at this point. Suffice it to say that the evidence of appellant's express and bold manifestations of disloyalty to the United States over the period February 12, 1943 through December 28, 1945, abundantly supports the findings that appellants voluntarily renounced their citizenship.

However, appellants argue, in effect, that one should not draw inferences adverse to them from such evidence, because the oppressive conditions under which appellants existed caused them to perform acts which did not reveal their true feelings. Such an argument is better made to a trier of fact; the trial court's determination of the conflicting evidence, as expressed in its findings of fact, can be set aside only if "clearly erroneous" and due regard must be given to its opportunity to judge the credibility of the witnesses.

Fed. Rules of Civ. Proc., Rule 52(a);

Martin v. Be-Ge Mfg. Co. of Gilroy, 232 F. 2d 530 (9th Cir., 1956) (and cases cited therein).

Since the trial court disbelieved appellant's explanations of their disloyal actions, it would seem that the findings upon credibility are crucial. If such findings are upheld, then not only does the Government's evidence remain uncontradicted, but additional strength is lent to it by the very reason of the disbelief of the attempted explana-

tion thereof. Therefore, some of the evidence especially pertinent to the findings upon credibility will be reviewed.

A. As stated previously, *Murakami v. Dulles*, 221 F. 2d 588, *supra*, apparently stands for the proposition that a pre-Tule Lake expression of refusal to serve in the United States Armed Forces, to swear unqualified allegiance to the United States, and to forswear allegiance to the Japanese Emperor, is sufficient evidence to support a trial court's finding that a renunciant's testimony as to involuntary renunciation was unbelievable. Here, both appellants made such statements before being sent to Tule Lake, [Ex. T, R. T. 53, 106; Ex. B, R. T. 200.]

B. Appellant's testimony that their continuous expressions of disloyalty over the period 1943-1945 were all as a result of fear or coercion is not inherently believable. Especially is this so when the great majority at Gila River did not answer "no" to Questions 27 and 28, and did not submit requests for repatriation, as did appellants. Furthermore, the bold and insulting nature of appellants' remarks in their renunciation hearings not only indicate their true feelings, but, as well, a lack of fear of officials of the United States. If appellants were fearless enough to be so brazen with the Government having custody and control over them, it is reasonable to infer that they were not so intimidated by other evacuees as to renounce their citizenship and return to Japan.

C. Norio Kiyama's tale of being "forced" into the Hokoku Seinen-dan similarly can be given little weight. Although all his disloyal actions over a two-year period were allegedly prompted by fears of the pro-Japanese evacuees, when his name was entered into the roll of the Hokoku, appellant stated his indignation to his spon-

sor, who undoubtedly also must have been a member. [R. T. 175.] His indignant attitude towards a Hokoku member at being named to membership in that pro-Japanese organization does not seem consistent with his alleged fears of not being considered a loyal Japanese.

For still additional reasons, it is apparent that appellant was not too afraid of the pro-Japanese, as he testified never did anything in his capacity as clerk for the Hokoku, never went to meetings of the organization, went to only one speech, and only two or three times participated in morning exercises. [R. T. 176.] Yet appellant states he was sufficiently afraid of the Hokoku to have given up the priceless heritage of his citizenship.

Appellant's testimony as to lack of activity in the Hokoku Seinen-dan also was not very consistent with his being named as one of the seventy leaders and officers of the segregation group who were the most active leaders in the reign of terror which existed at Tule Lake during the renunciation hearings. [Tr. of R. 22; Ex. L, R. T. 289-290.]

D. Still more incredible was Norio Kiyama's reason for returning to Japan after the war, namely, that he was afraid of the pro-Japanese in the camp. [R. T. 296.] Yet, his testimony was that he had planned to rescind his renunciation of American citizenship "as soon as I arrived in Japan." [R. T. 303.] Perhaps the times were troubled and unusual, but even in retrospect, Japan would seem a strange place to go if one wished to escape pro-Japanese pressure. Appellant never explained why he thought it would be so easy to rescind his renunciation once in Japan, and so difficult to express his loyalty to the United States while here and under its protection.

In the same vein, appellant testified that if he had been deported to Japan during the war by reason of his "coerced" disloyal statements, he felt that there would not be the same kind of pro-Japanese pressure against him there as there was in the Relocation Centers. [R. T. 319.] Appellant continues his amazing recitation by testifying that, even if he had been mistreated in Japan, he would have told Japanese officials that he was an American and would not fight in the Japanese Army against the United States. [R. T. 319, 320, 322.] These remarks either came from a very brave man or from a liar. In either case, it was reasonable for the trial court to view with great suspicion appellant's claim of renunciation through fear.

E. The trial court further found incredible appellant's testimony that, while he was loyal to the United States upon his return to this country from his Japanese schooling, and was aware of Pearl Harbor, and was still loyal to the United States in 1941 [R. T. 190], nevertheless he never gave a single thought during the entire war as to which side would win. [R. T. 191, 192, 324.]

F. As to Mrs. Kiyama, the district judge apparently disbelieved her testimony as to involuntary renunciation because of her maintenance of a Yokohoma bank account from 1938 through 1943 [R. T. 125] and registration of her children with the Japanese consulate in order to obtain Japanese citizenship for them. [R. T. 126-127.] In addition, the court specifically found that her demeanor while testifying was not convincing, her responses to questions were vague and contradictory, and that her testi-

mony had been impeached. [Tr. of R. 34.] As was held in *Nishikawa v. United States*, 235 F. 2d 135, *supra*:

“The trier of fact need not accept the uncontradicted testimony of a witness who appears before it, and the demeanor of that witness may be such as to convince the trier that the truth lies directly opposed to the statements of the witness. [citations].”

The foregoing evidence, and inferences which may be drawn therefrom, demonstrate that substantial evidence supported the findings of fact, and that they are not clearly erroneous.

Conclusion.

The evidence below clearly shows that the judgment of the trial court should be affirmed.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,

BRUCE A. BEVAN, JR.,
Assistant U. S. Attorney,
Attorneys for Appellee.

No. 15492 ✓

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ELIUD YERGENSON,

Appellant,

vs.

JOHN FORBES DIXON as Secretary of State,

Appellee.

APPELLER'S BRIEF

LAURENCE E. WARREN
United States Attorney.

RICHARD A. LESTER,
Assistant U. S. Attorney,
Chief of Civil Division.

JOHN A. BRACK - To
Assistant U. S. Attorney,
100 Federal Building,
San Francisco 12, California,
counseling for Appellee.

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No. 15422
IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

YUKIO YAMAMOTO,

Appellant,

vs.

JOHN FOSTER DULLES, as Secretary of State,

Appellee.

APPELLEE'S BRIEF.

Statement of Jurisdiction.

On December 21, 1951, appellant filed his Complaint which charged that he had been denied a right and privilege as a national of the United States. [Tr. of R. 4.]* On February 15, 1952, appellee filed his Answer. [Tr. of R. 7.]

The case was tried before District Judge William M. Byrne from July 17, 1956, through July 19, 1956. [Tr. of R. 9.] Judgment was rendered in favor of appellee on September 4, 1956. [Tr. of R. 19.] A timely notice of appeal was filed on October 25, 1956. [Tr. of R. 20.]

The District Court had jurisdiction of the action under Title 8, U. S. C., Section 903. This Court has jurisdiction of the appeal pursuant to the provisions of Title 28, U. S. C., Section 1291.

*Tr. of R. refers to the Clerk's Transcript of Record. R. T. refers to the Reporter's Transcript of Proceedings.

Statement of the Case.

Appellant Yukio Yamamoto was born on June 29, 1922, at Fresno, California, of Japanese parents. [R. T. 104.] Yamamoto received a high school education in the United States and also attended a Japanese school in this country for nine years. [R. T. 104, 118.]

On May 16, 1942, appellant was evacuated along with other persons of Japanese descent, first being sent to the Fresno Assembly Center, Fresno, California. [R. T. 105.] Appellant remained at the Fresno Center until about October, 1942, at which time he was transferred to the Jerome Relocation Center at Denson, Arkansas. [R. T. 108.]

While appellant was at the Jerome Relocation Center from October, 1942, to September, 1943 [R. T. 112], the Center operated, except for the inconveniences resulting from detention, in much the same fashion as a community outside the Center. [Tr. of R. 12-13.] Community government was established. [R. T. 222.] Employment in all activities of the Center was provided for the evacuees. [R. T. 235, 243.] Medical facilities were adequate. [R. T. 249-251.] Educational [R. T. 226-234] and recreational facilities were provided. [R. T. 246-249.] Thus, the conditions existing at Jerome Relocation Center were markedly different from those existing at Tule Lake. The Jerome Relocation Center was relatively peaceful. There were few, if any, disturbances such as those which prevailed at Tule Lake. [R. T. 84, 98.]

At Jerome, 5,848 persons registered for the Army Enlistment and W.R.A. Leave-Clearance program in 1943. Of these registrants, 4,385 answered "Yes" to Question 28, which asked whether the registrant was willing to

defend the United States, willing to forswear allegiance to foreign forces or The Japanese Emperor and willing to swear unqualified allegiance to the United States. [Pltf. Ex. I, p. 199; R. T. 7.] 1,089 persons answered "No," 346 gave a qualified answer, while 28 refused to answer at all.

On March 10, 1942, appellant signed a form for the Army Enlistment Registration program at the Jerome Relocation Center entitled "Statement of United States Citizen of Japanese Ancestry." [Ex. A, R. T. 138.] In executing this form, appellant refused to answer most of the questions, which questions included No. 27, which asked whether appellant was willing to serve in the armed forces of the United States on combat duty, and No. 28, which asked whether appellant was willing to swear unqualified allegiance to the United States, to faithfully defend it from attack by foreign or domestic forces, and to forswear any form of allegiance or obedience to the Japanese Emperor. [*Ibid.*] At the end of this form, appellant inserted in his own handwriting the statement that "I wish to expatriate and repatriate to Japan." [*Ibid.*]

On March 10, 1943, appellant signed War Relocation form 126a. [Ex. B, R. T. 144.] In executing this form, appellant Yamamoto again refused to answer any questions and at the end of the form again inserted in his own handwriting that he wished to expatriate and repatriate to Japan. [*Ibid.*] One of the questions which he refused to answer was whether he was willing to take employment in any part of the United States. [*Ibid.*]

On April 29, 1943, appellant signed a form entitled "Individual Request for Expatriation." [Ex. C, R. T. 125.] In executing this form appellant indicated his desire to be repatriated to Japan. [*Ibid.*]

Appellant was given the opportunity to change his previous position and answer the questions in Exhibit A affirmatively. [R. T. 94, 153.] Appellant did not change his mind, knowing that his refusal to change his answers would result in his being transferred to Tule Lake. [R. T. 93, 153.]

After being transferred to the Tule Lake Segregation Center in September, 1943 [Ex. K, R. T. 204, 205], appellant joined and became a member of the Hokoku Seinen-dan, a militant pro-Japanese organization. [R. T. 114.] Appellant conformed to the customs of this organization and participated in its activities. He got up at 5:30 every morning to do exercises [R. T. 165], drilled and goose-stepped with the other members [R. T. 168], shaved his head and wore sweat shirts with the emblem with the rising sun upon them. [R. T. 169.]

On December 6, 1944, appellant wrote a letter to the Attorney General, expressing a desire to renounce his United States nationality, and enclosed a typewritten copy of an application form and requested advice whether it would be necessary for him to re-execute the request on a printed application form. [Ex. F, R. T. 178, 179.]

On December 28, 1944, appellant executed and submitted to the Attorney General a form entitled "Application for Permission to Renounce United States Nationality," in which he expressed a desire to renounce his United States nationality. [Ex. G, R. T. 181, 184.]

On January 10, 1945, appellant again wrote the Attorney General a letter entirely in his own handwriting, stating that he had sent in the proper application form for renunciation of United States citizenship about a month ago and asked that his name be checked and that he be called for a hearing as soon as possible. [Ex. H, R. T. 184.]

On January 19, 1945, a hearing on appellant's renunciation of citizenship was held at Tule Lake. At this hearing appellant stated, among other things, that he wanted to give up his citizenship because he had no rights here and no faith in this country; that he felt this way before he came to the camp because of the way he was treated as a Japanese; that, as a Japanese, he wanted to go back and serve his country; that he did not care for American citizenship; and that he knew what it meant to renounce his American citizenship. [Ex. I, R. T. 116, 160.]

On January 19, 1945, appellant also executed a form entitled "Renunciation of United States Nationality," formally renouncing his United States nationality in accordance with Section 401(i) of the Nationality Act of 1940, as amended. [Ex. J, R. T. 199, 200.] On May 3, 1945, this renunciation was approved as not being contrary to the interests of national defense. [*Ibid.*]

Appellant was removed from Tule Lake Segregation Center and interned at the Fort Lincoln Internment Camp at Bismark, North Dakota, on February 14, 1945. [Ex. K, R. T. 204, 205.]

On September 24, 1945, appellant executed a form entitled "Application for Repatriation" on which he applied for repatriation to Japan. [Ex. L, R. T. 122, 123.] On December 29, 1945, appellant left the United States and returned to Japan. [Ex. M, R. T. 219.] Appellant remained in Japan from some time during 1946 until some time during 1952, when he returned to the United States on a Certificate of Identity for the purpose of prosecuting this action. [Tr. of R. 3.]

ARGUMENT.

I.

Presumption of Involuntary Renunciation.

Because of the oppressive conditions prevailing at Tule Lake (see *Acheson v. Murakami*, 176 F. 2d 953 (9 Cir., 1949)), this Court has held that a rebuttable presumption of involuntary renunciation exists for those renunciants confined at Tule Lake. *McGrath v. Abo*, 186 F. 2d 766, 773 (9 Cir., 1951). When substantial evidence rebutting the presumption is introduced, the burden of proving the voluntary nature of the renunciation is upon the plaintiff. (*Ibid.*) Appellant herein contends that the Government's evidence was not sufficient to overcome the presumption.

First, appellant argues that his Tule Lake activities should be ignored because he "did nothing different than did the thousands of others who renounced and engaged in activity before the renunciation." This argument fails to take into account what this Court stated in *McGrath v. Abo*, *supra*, namely, that "the record shows the certainty that many of the 4,315 plaintiffs who voluntarily renounced were disloyal to the United States." Appellant does not, and cannot, point to evidence in the record which shows that his activities were solely like those of the loyal renunciants and unlike those of the disloyal. Consequently, there is more than ample justification for considering his conduct at the place of, and near in time to, his renunciation.

It is argued, however, that the effect of the *Abo* presumption is overcome only by conduct at Tule Lake which indicates that appellant himself was a "coercer." Nothing in *Abo* or in *Murakami v. Dulles*, 221 F. 2d 588 (9 Cir., 1955), decided after the *Abo* case, should lead one to this

conclusion. Even if such be the case, though, appellant's membership in the terroristic Hokoku Seinen-dan is the basis for a reasonable inference that he was a "coercer."

Next, appellant would also have us disregard his pre-Tule Lake activities because of the goadings of powerful agitators and the oppressiveness of imprisonment at Jerome. However, no presumption of coerced activity exists except with respect to Tule Lake. *McGrath v. Abo*, 186 F. 2d, *supra*, at p. 774. As set forth in the Statement of the Case, conditions at Jerome were entirely different than at Tule Lake. Moreover, 4,385 out of 5,848 registrants were able to express their loyalty to the United States by a "yes" answer to Question 28, and confinement of the majority did not force them to submit requests for expatriation. Thus, appellant's minority action of refusing to answer would appear to be significant. A "no" answer in *Murakami v. Dulles*, 221 F. 2d 588, 589 (9 Cir., 1955), to Question 28 apparently was the basis for sustaining a trial court's finding that it refused to believe the testimony of a renunciant, which indicates the significance of Question 28.

Appellant argues that his post-Tule Lake activities of requesting repatriation after the war and returning to Japan are not sufficient to overcome the *Abo* case. Most of appellant's contentions on this point rely upon his own testimony, which the trial court did not believe. [Tr. of R. 16.] The determination of whether the appellant was speaking the truth in 1945 or in 1956, was peculiarly within the province of the trier of fact. Appellant's return to Japan in 1945 cannot be said to be an unreasonable ground for inferring that he voluntarily renounced United States citizenship earlier in the year.

In *McGrath v. Abo*, 186 F. 2d, *supra*, at page 774, this Court stated that certain proposed evidence of the Gov-

ernment would overcome the presumption afforded Tule Lake renunciants. The offers of proof therein consisted of facts such as that renunciants had spent their formative years in Japan, had answered Question 28 in the negative, had applied for repatriation prior to renunciation, had been active members of pro-Japanese groups at Tule Lake, had voluntarily returned to Japan subsequent to renunciation, or had otherwise demonstrated that their renunciation was voluntary.

In the present case, appellant attended a Japanese school in this country for nine years [R. T. 104, 118]; applied for repatriation prior to renunciation [Ex. C, R. T. 125]; had refused to answer Question 28 [Ex. A, R. T. 138]; had been an active member of a pro-Japanese organization [R. T. 114]; and had otherwise demonstrated that his renunciation was voluntary. [Exs. B, E, F, H, I and L.]

From the foregoing documentary evidence of the Government, consisting of appellant's activities before, during and after Tule Lake, it is seen that the presumption of the *Abo* case was overcome. Appellant states that the Government must rely upon documentary evidence, evidently being critical of such evidence by reason of the circumstances under which they were executed. But documents alone need not be relied upon to rebut the presumption of involuntary coercion.

Appellant elected to testify before the Government put on its case. [R. T. 104.] Thus, appellant subjected his credibility to the scrutiny of the trial court without relying first on the presumption *Abo* afforded him. The Court disbelieved appellant's explanation of his 1943-1945 actions and made this disbelief the subject of a specific finding of fact. As was stated in *Nishikawa v. United States*, 235 F. 2d, *supra*, at page 140:

“The trier of fact need not accept the uncontradicted testimony of a witness who appears before it, and the demeanor of that witness may be such as to convince the trier that the truth lies directly opposed to the statements of the witness. [Citations.]”

It would seem that either the documentary evidence alone, according to the *Abo* case, or the incredibility of appellant alone, according to the *Nishikawa* case, would be sufficient to overcome the presumption of involuntary renunciation. Certainly both considered together must be held to overcome it.

II.

Burden of Proof.

It is contended that the trial court erroneously placed the burden of proving the involuntary nature of renunciation upon the appellant. Considerable time is devoted to arguing that *Gonzales v. Landon*, 350 U. S. 920, established a rule contrary to that announced in *McGrath v. Abo*, 186 F. 2d 766, *supra*. However, appellant admits that his identical argument was rejected in *Nishikawa v. Dulles*, 235 F. 2d 135, 141 (9 Cir., 1956). If *Nishikawa* is in point, there seems little point in our arguing the matter much further.

In *Nishikawa*, as in the present cases, the ground of expatriation was pleaded in the Complaint and was admitted in the Answer, thus being proved conclusively. [Tr. of R. 3, 8, 10.] And, as in *Nishikawa*, the ground of expatriation (here, renunciation) would seem to require no mental element, or if so, only that the act be knowingly done. In any event, the appellant admitted at the trial that he knew the meaning of his act of renunciation, *i.e.*, that his citizenship would be taken away. [R. T. 182-183, 200.]

In criminal cases, where the burden on the Government is much greater even than the "clear and convincing" evidence rule, the Government is not required to prove that confessions are voluntary, even though confessions are carefully scrutinized by the Courts.

Rhodes v. United States, 224 F. 2d 348 (5 Cir., 1955);

Hartzell v. United States, 72 F. 2d 569 (8 Cir., 1934);

Ah Fook Chang v. United States, 91 F. 2d 805 (9 Cir., 1937);

Gray v. United States, 9 F. 2d 337 (9 Cir., 1926);

Murphy v. United States, 285 Fed. 801 (7 Cir., 1923).

No greater burden should be upon the Government in a civil case; thus, proof that the act of expatriation was knowingly made should be more than sufficient to sustain the Government's burden of proof on this point.

As appellant has pointed out, however, the *Nishikawa* case is before the Supreme Court, and appellee is informed that reargument therein has been scheduled for next year. Even if that Court should decide that the burden of proving voluntary renunciation is upon the Government, appellee submits that that burden has been sustained here.

The trial court did not merely find that appellant had not sustained his burden of proving voluntary renunciation; the court went much further and made affirmative findings as follows:

"It is not true, as alleged in plaintiff's Complaint, that plaintiff's renunciation of United States nationality was the result of coercion, fears, confusion and mistake; nor is it true, as alleged, that such renunciation was not his free and voluntary act.

“It is true that plaintiff’s renunciation of United States nationality was his free and voluntary act.”
[Tr. of R. 16.]

Thus, the language of the findings demonstrates that the court did not merely conclude that appellant had not sustained his burden, but specifically found that the facts were contrary to his contention. All doubt as to this matter is dispelled by the court’s findings that (1) it did not believe the testimony of appellant; (2) that his sympathies and loyalties lay with Japan; (3) that before, during, and after renunciation, appellant desired to be repatriated to Japan. [Tr. of R. 12, 16.]

The primary evidence of the appellant, aside from the *Abo* presumption, on the crucial question of voluntary renunciation, came from his own lips. This evidence the trial court did not believe, and it is proper for a court to conclude that the truth lies just the opposite of testimony given by witnesses a court deems untrustworthy. *Nishikawa v. United States*, 235 F. 2d, *supra*, at p. 140. In any event, the documentary evidence of the Government showing the appellant’s persistent, continuous and overt expressions of disloyalty to the United States, and desire to return to Japan, coupled with the court’s disbelief of the appellant’s present version of his activities, constituted clear and convincing proof, if such be necessary, of the voluntary nature of his renunciation. Since such was the evidence, and since the court specifically found that the renunciation was voluntary, it is immaterial upon whom the trial court considered the burden of proof. Such an erroneous conclusion of law would be harmless error *Craig-Giles Iron Co. v. Brownlee*, 272 Fed. 74 (4 Cir., 1921), even if the doctrine of *Gonzales v. Landon*, *supra*, be held to apply to cases of this type.

III.

Findings of Fact.

Appellant contends that the findings of fact are not supported by sufficient evidence. The Statement of the Case sets forth the evidence upon which the Government relied at the trial, and it seems unnecessary to repeat such evidence at this point. Suffice it to say that the evidence of appellant's express and bold manifestations of disloyalty to the United States over the period February 12, 1943, through December 28, 1945, abundantly supports the findings that appellant voluntarily renounced his citizenship.

However, appellant argues, in effect, that one should not draw inferences adverse to him from such evidence, because the oppressive conditions under which appellant existed caused him to perform acts which did not reveal his true feelings. Such an argument is better made to a trier of fact; the trial court's determination of the conflicting evidence, as expressed in its findings of fact, can be set aside only if "clearly erroneous" and due regard must be given to its opportunity to judge the credibility of the witnesses.

Fed. Rules Civ. Proc., Rule 52(a);

Martin v. Be-Ge Mfg. Co. of Gilroy, 232 F. 2d 530 (9 Cir., 1956) (and cases cited therein).

Since the trial court disbelieved appellant's explanation of his disloyal actions, it would seem that the finding upon credibility is crucial. If such finding is upheld, then not only does the Government's evidence remain uncontradicted, but it is lent additional strength by the very reason of the disbelief of appellant's attempted explanation thereof. Therefore, some of the evidence especially pertinent to the finding upon credibility will be reviewed.

A. As stated previously, *Murakami v. Dulles*, 221 F. 2d 588, *supra*, apparently stands for the proposition that a pre-Tule Lake expression of refusal to serve in the United States armed forces, to swear unqualified allegiance to the United States, and to forswear allegiance to the Japanese Emperor, is sufficient evidence to support a trial court's finding that a renunciant's testimony as to involuntary renunciation was unbelievable. Here, appellant refused to state his allegiance to this country, or whether he would serve in our armed forces before being sent to Tule Lake. [Ex. A, R. T. 138.]

B. Appellant's testimony that his continuous expressions of disloyalty over the period 1943-1945 were all as a result of fear or confusion is not inherently believable. Especially is this so when the great majority at Jerome did not answer "no" to Questions 27 and 28, and did not submit requests for repatriation, as did appellant. Furthermore, the bold and insulting nature of appellant's remarks in his renunciation hearing not only indicates his true feelings, but, as well, a lack of fear of officials of the United States. If appellant was fearless enough to be so brazen with the Government having custody and control over him, it is reasonable to infer that he was not so intimidated by other evacuees as to renounce his citizenship and return to Japan.

C. Appellant testified that the reason he refused to answer questions 27 and 28 was because of listening to one speech made at Jerome by one Father Kai and one Kuratomi. [R. T. 136-138.] According to another of appellant's witnesses, Father Kai and his group, to the common knowledge and belief of the Jerome Camp, owed their allegiance and loyalty to Japan. [R. T. 87.] Since appellant presumably was aware of this common knowl-

edge, it is reasonable to infer that his adherence to a group loyal to Japan was not as a result of confusion, but of choice.

D. On an affidavit required to be submitted in connection with his passport application in 1951, appellant stated that the reason he had applied for repatriation was because of "involuntary pressure of pro-Japanese group." [Ex. D(6), R. T. 170.] If what appellant referred to was his Request for Expatriation of April 29, 1943 [Ex. C, R. T. 125], his 1951 explanation was far different than the one he advanced at the trial. At R. T. 111, appellant says he signed the expatriation form because "we weren't treated as a rightful citizen . . . and they had me all confused." At R. T. 147-148, appellant gave as his reason for executing Exhibit C, "Oh, I just followed the rest."

On the other hand, if what appellant referred to in his affidavit was his Application for Repatriation of September 24, 1945 [Ex. L, R. T. 122-123], still his 1951 claim of "involuntary pressure" was inconsistent with his reasons advanced at the trial for executing said Application. At R. T. 211, appellant testified he executed said Application for Repatriation because he thought he might never be able to return to the United States unless he did.

Thus, nowhere in the trial was there any claim of involuntary pressure by pro-Japanese groups with respect to either appellant's Request for Repatriation or Application for Expatriation.

Also on Exhibit D [7b thereof], appellant stated in 1951 that he would have changed his refusal to answer Questions 27 and 28 if an opportunity had been afforded, but his fear of the pressure groups kept him from doing it. Again, this is inconsistent with his testimony at the

trial, as he did not testify therein he had fear of any pressure group until he reached Tule Lake.

E. Appellant testified at the trial that he did not consider himself a loyal citizen of the United States at the time of his transfer to Tule Lake. [R. T. 131.] Further, appellant testified that he did not know whether he desired to remain in this country or whether he desired to go to Japan when he refused to answer Questions 27 and 28, and when he requested repatriation to Japan. [R. T. 140-141, 147.]

F. Appellant also testified that he never gave a thought throughout the war as to whether Japan or the United States would or should win. [R. T. 155, 216-218.] The war disrupted his entire life; he was confined by the United States due to the war with the country of his parents' origin; Tule Lake was enormously interested in the great battles of the war. [Ex. 3, pp. 325, 326; R. T. 8.] Thus, appellant's assertion of a lack of thought concerning the outcome is simply fantastic.

G. Appellant testified that he did not know the meaning of the words Hokoku Seinen-dan (Young Men's Organization to Serve Our Mother Country) while at Tule Lake, even though he was a member of that organization. [R. T. 158.] In support of this statement, appellant testified that he was never told by anyone the meaning of those words, and that he never saw any newspaper published by the Hokoku. [R. T. 158-159.] Appellant studied the Japanese language for nine years. [R. T. 119-121.] Consequently, one might well expect him to be aware of the name of the pressure organization which allegedly had compelled him to join by threats [Ex. D(86), R. T. 170], or at least have enough curiosity to ask someone the name of the organization which caused

him to arise at 5:30 A.M. each morning to goose-step. [R. T. 165, 168.]

H. Appellant explains his remarks to the United States officials conducting his renunciation hearing by saying he was trying to make "a good impression" upon the officials so as to obtain approval of his renunciation. [R. T. 196.] Yet appellant had no explanation of why certain admittedly truthful statements he made at the hearing were not also colored so as to create a better impression. [R. T. 161-163, 197-199.]

I. In Answer 8(e) to Exhibit D, appellant explained his membership in the Hokoku by saying he had not realized the organization was overrun by pro-Japanese elements. However, in Answer 8(b), appellant says the pressure group at Tule Lake forced him to join the Hokoku by threatening him and keeping him in constant fear. It would be more than unusual if appellant did not realize that pro-Japanese elements overran the Hokoku when his membership therein was compelled by his own fear of Hokoku threats of violence.

J. Appellant testified that he left the United States in 1945 because he feared he would be deported anyway, and if so, he never would have had a chance to return to this country. [R. T. 211.] It is strange to think that one would believe rumors saying the best way to recover one's citizenship and be in the United States is to request expatriation therefrom, and to depart to a foreign country. However, renunciants did not believe or even hear such a rumor. Appellant's Exhibit 3, "The Spoilage," at page 326, states a rumor prevalent just before the mass renunciations:

" . . . after the war, renunciants would not be deported, but would be permitted to remain in the United States as aliens, if they so desired."

Thus, the rumors circulated in Tule Lake were directly opposed to what appellant testified influenced him.

Appellant testified that one of the reasons he renounced his citizenship was that he had heard stories going around that he was going to be deported anyway. [R. T. 176-177.] These rumors again were inconsistent with those prevalent at Tule Lake. Indeed "The Spoilage" is not authority that the majority of renunciants there renounced because they feared deportation. Instead "The Spoilage" points out that it was the fear of being relocated in the United States that caused the mass renunciation. At page 333, it is reported:

"Two administrative decisions announced simultaneously on December 17 transformed general reluctance to accept the pressure group program as a whole to popular support of the main Resegregationist issue—renunciation of American citizenship. The first of these decisions was the rescission by the Western Defense Command of the orders excluding Japanese Americans from the West Coast. The second was the decision by the War Relocation Authority to force resettlement by liquidating all relocation projects within a year."

Therefore, appellant's fear of deportation at the time of renunciation again is inconsistent with other evidence.

K. Appellant has stated that he joined and remained a member of the Hokoku Seinen-dan because of fear of bodily harm. [Ex. D, 8(b), 8(c); R. T. 115, 117.] Yet his Exhibit 3, "The Spoilage," shows that the Hokoku was highly selective in its membership (p. 322); that some dissenters were expelled (p. 330); and that other members voluntarily left (pp. 331-332), evidently not fearing reprisals.

At page 322, Nishimoto states the membership requirement of the Sokuji Kikoku Hoshi-dan whose name was very shortly changed to Hokoku Seinen-dan:

“ . . . Membership was limited to those who had signed the resegregation petition, who wished immediate return to Japan, who had pledged absolute loyalty to Japan, and who were willing ‘to sacrifice life and property in order to serve our mother country in time of unparalleled emergency.’ ”

Other excerpts from “The Spoilage” also seem pertinent:

“In spite of the proselytizing activities of the leaders and the spread of rumors favorable to their program, the Resegregationists failed to win over the bulk of the population. As noted, appreciably less than half of the young men members had yielded to their exhortations to renounce citizenship by the middle of December. Many of the other residents were irritated by the fanfare of bugles, the flag waving, the exhibitionistic performances of the young men and the constant stream of propaganda to which they were subjected. Criticisms of Resegregationist activities began to be voiced, in spite of fear of terrorist tactics.

* * * * *

“By late 1944, only about 32 per cent of the population aged 17½ or older were listed as members of the combined Resegregationist organizations.” [Ex. 3, pp. 326, 327, 328.]

In summary, it can be seen that the trial court’s disbelief of appellant’s testimony was supported by the evidence. In addition to the inconsistencies of appellant’s evidence, it must be remembered that the trial judge had the opportunity to observe the appellant while on the witness stand. It would appear a difficult task for appellant

to show ~~that~~ ^{erroneous} the trial court's finding that "plaintiff's demeanor while testifying was not convincing." In short, appellant has not, and cannot, prove that the court's disbelief of his testimony was clearly erroneous. This being so, the Government's evidence of appellant's disloyal actions during 1943-1945 is not only uncontradicted, but is of great additional weight. Therefore, the finding and conclusion that appellant voluntarily renounced his citizenship is supported by overwhelming evidence.

Conclusion.

The evidence below clearly shows that the judgment of the trial court should be affirmed.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,

BRUCE A. BEVAN, JR.,
Assistant U. S. Attorney,
Attorneys for Appellee.



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Court of Appeals

for the Ninth Circuit

FOX WEST COAST THEATRES CORPORA-
TION, TWENTIETH CENTURY-FOX
FILM CORPORATION and LOEW'S, IN-
CORPORATED, Appellants,

vs.

PARADISE THEATRE BUILDING CORPORA-
TION, Appellee.

PARADISE THEATRE BUILDING CORPORA-
TION, Appellant,

vs.

FOX WEST COAST THEATRES CORPORA-
TION, TWENTIETH CENTURY-FOX
FILM CORPORATION and LOEW'S, IN-
CORPORATED, Appellees.

Transcript of Record

In Six Volumes

VOLUME I.

(Pages 1 to 464, inclusive)

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Southern District of California,
Central Division

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No. 15424

United States
Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

O'MELVENY AND MYERS,

433 South Spring Street,
Los Angeles, California,

Attorneys for Defendant Loew's Inc.

NEWLIN, TACKABURY, JOHNSTON,

1100 Roosevelt Building,
Los Angeles 17, California,

Attorneys for Defendants Twentieth Cen-
tury Fox Film Corporation and Fox
West Coast Theatres Corporation.

WELLER AND CORINBLIT,

ELWOOD KENDRICK,

3325 Wilshire Boulevard,
Los Angeles, California,

JOSEPH ALIOTO,

111 Sutter Street,
San Francisco, California,

Attorneys for Plaintiff.

I.

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted against the above-named defendants under Sections 15 and 26 of Title 15, U.S.C.A., being part of the Act of Congress of July 2, 1890 entitled "An Act to Protect Trade and Commerce against Unlawful Restraint and Monopolies", as amended, commonly [1A*] known as the Sherman Act and the Clayton Act. The purpose of this action is to recover damages against the above-named defendants for injuring plaintiff in its business of exhibiting motion pictures in the Paradise Theatre at 9110 South Sepulveda Boulevard, Los Angeles 45, California, which injury proximately resulted from defendants' violations of the anti-trust laws of the United States; and to restrain and enjoin the defendants from continuing the illegal monopoly and the combination, conspiracies and contracts in restraint of plaintiff's trade and commerce.

2. The business of producing, distributing and exhibiting motion pictures and the activities of each branch of the motion-picture industry are within or directly affect trade and commerce among the several states. In the course of producing, distributing and exhibiting motion pictures, there is a constant, continuous stream of trade in commerce between the states and between the territories of the United States, consisting of the solicitation and

* Page numbers appearing at bottom of page of original Transcript of Record.

making of contracts, the assemblage of personnel, property and material at the studios or upon location for the production of pictures, the transportation of negative films from the studios to the laboratories where positive prints of motion-picture films are prepared and from there shipped to film exchanges throughout the United States. The transportation of said film from said exchanges to and from motion picture theatres located in the areas served by the respective exchanges, the interchange of said films between each exchange and other exchanges of the same distributor located in other states and territories of the United States, and the shipment of films from the exchanges throughout the United States to use for scrapping and final disposition.

3. Each of the defendants transacts business and maintains offices in the above-described district and division. [2]

II.

Description of Parties

4. The plaintiff, Paradise Theatre Building Corp., is a California corporation with its principal place of business in the City of Los Angeles, State of California. Plaintiff operates and has since August 23, 1950, operated the Paradise Theatre at 9110 South Sepulveda Boulevard, Los Angeles 45, California. The Paradise Theatre is a modern building erected just prior to August 23, 1950, at a cost of Four Hundred Eighty-eight Thousand Dollars (\$488,000.00), seats One Thousand Three Hundred Fourteen (1,314) persons and has sub-

stantial and adequate free parking facilities and is equipped, staffed and supervised, and plaintiff is and from the last mentioned date has been ready, willing and able to exhibit the best motion pictures at the earliest dates and otherwise operate a "first-run" motion picture theatre. The Paradise is in the fast growing Westchester community of Forty Thousand (40,000) persons in Southwest Los Angeles.

5. Defendant Twentieth Century-Fox Film Corporation, is and at all times herein mentioned was a corporation organized and existing under the laws of the State of New York and is engaged in the business of producing, distributing and exhibiting motion pictures either directly or indirectly or through subsidiary or associated companies in various parts of the United States, including Los Angeles, California, and in foreign countries.

6. Defendant National Theatres Corporation, a subsidiary controlled by Twentieth Century-Fox Film Corporation, is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1609 West Washington Boulevard, Los Angeles, California, and is engaged in the business of [3] exhibiting motion pictures, either directly or through associated corporations in various parts of the United States and more particularly in several of the western states, including California, and in the City of Los Angeles.

7. Defendant Fox West Coast Theatres Corpora-

tion, a wholly owned subsidiary of National Theatres Corporation, is and at all times herein mentioned was a corporation organized and existing under the laws of the State of California, with its principal place of business at 1609 West Washington Boulevard, Los Angeles, California, and is engaged in the business of exhibiting motion pictures, either directly or through subsidiary or associated companies in various parts of the United States, and more particularly in several of the western states, including California, and in the City of Los Angeles.

8. Defendant Warner Bros. Pictures, Inc., is and at all times herein mentioned was a motion picture company organized and existing under the laws of the State of Delaware, and is engaged in the business of producing, distributing and exhibiting motion pictures either directly or through subsidiary or associated companies, in various parts of the United States, including Los Angeles, California, and in foreign countries.

9. Defendant Warner Bros. Picture Distributing Corporation, a wholly owned subsidiary of Warner Bros. Pictures, Inc., is and at all times herein mentioned was a corporation organized and existing under the laws of the State of New York and is engaged in the business of distributing motion pictures in various parts of the United States, including Los Angeles, California, and in foreign countries.

10. Defendant Paramount Pictures, Inc., is and

at all times herein mentioned was a corporation organized and existing under the laws of the State of New York and is engaged in the business of producing, distributing and exhibiting motion [4] pictures, either directly or through subsidiary or associated companies, in various parts of the United States, including Los Angeles, California, and in foreign countries.

11. Defendant Paramount Film Distributing Corporation, Inc., a wholly owned subsidiary of Paramount Pictures, Inc., is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Delaware, and is engaged in distributing motion pictures in various parts of the United States, including Los Angeles, California, and in foreign countries.

12. Defendant Loew's Incorporated, is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Delaware, and is engaged in the business of producing, distributing and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States, including Los Angeles, California, and in foreign countries.

13. Defendant Universal Corporation, is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Delaware. Prior to on or about May 25, 1943, Universal Pictures Company, Inc. was a subsidiary controlled by Universal Corporation, which, prior to the

last-mentioned date, was a corporation organized and existing under the laws of the State of Delaware and engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States, including Los Angeles, California, and in foreign countries. On the last - mentioned date the said corporations merged under the name of Universal Pictures Company, Inc.

14. Defendant Universal Film Exchanges, Inc. is a wholly owned subsidiary of Universal Pictures Company, Inc., [5] or Universal Corporation, and is and at all times herein mentioned was a corporation organized and existing under the laws of the State of New York, and is engaged in the business of distributing motion pictures in various parts of the United States, including Los Angeles, California, and in foreign countries.

15. Defendant United Artists Corporation is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Delaware, and is engaged in the distribution of motion pictures in various parts of the United States, including Los Angeles, California, and in foreign countries.

16. The true names or capacity, whether corporate, associate or otherwise of defendants Doe One to Doe Ten, inclusive, are unknown to plaintiff and plaintiff therefore designates them by such fictitious names and when their true names are

discovered this complaint and these proceedings will be amended accordingly.

17. All of the defendants hereinabove described are engaged in production and/or distribution of motion pictures either directly or through subsidiary companies and are sometimes hereinafter referred to as producers, distributors and producer-distributors. The defendants Fox West Coast Theatres Corporation, National Theatres Corporation are sometimes hereinafter referred to collectively as Fox West Coast.

18. Fox West Coast directly or through subsidiary companies owns, controls and is affiliated with upwards of Two Hundred Fifty (250) theatres in Los Angeles and vicinity.

III.

The Combination, Conspiracy and Monopoly

19. All of the defendants, each well knowing and acquiescing in the acts of the other, have for many years last [6] past conspired and combined with each other and each corporation within itself, by and through its officers and employees, unreasonably to restrain and monopolize trade and commerce and pursuant to said combinations and conspiracies have, in effect, unreasonably restrained and monopolized trade and commerce in the production, distribution and exhibition of motion pictures in the United States, including the State of California, and, more particularly, in the City of Los Angeles and vicinity, all in violation of Sections 1 and 2 of the Sherman Act.

IV.

Effect of Government's Major Motion Picture Case

20. Under the provisions of Section 16 of Title 15, U.S.C.A., a final judgment rendered in a suit brought by the United States to the effect that a defendant has violated the anti-trust laws shall be prima facie evidence against such defendant in any suit brought by any other party against such defendant under said laws as to all matters respecting which the said judgment would be an estoppel as between the parties thereto.

21. On July 20, 1938, the United States of America filed a complaint in the District Court of the United States for the Southern District of New York against Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's Inc.; RKO Radio Pictures, Inc.; Columbia Pictures Corporation; United Artists Corporation; Universal Corporation; Universal Pictures Company, Inc.; Twentieth Century-Fox and National Theatres Corporation, among others, charging violations of the anti-trust laws. (United States, v. Paramount Pictures, et al., Civil Action No. 87-273.) On November 14, 1940, an amended and supplemental complaint was filed against the same defendants. Before trial, negotiations for settlement resulted in the entry of a [7] consent decree, reserving to the United States the right at the end of a three-year trial period to seek the relief prayed for in the amended complaint. At the end of the three-year period, the United States moved for trial against all defendants. The District Court, after trial, found that

defendants had violated Sections 1 and 2 of the Sherman Act.

22. On May 3, 1948, the Supreme Court of the United States affirmed the judgment of the District Court that defendants had violated Sections 1 and 2 of the Sherman Act. This judgment in favor of the United States would be an estoppel between the parties thereto as to the monopoly, conspiracies, combination and contracts pleaded in this complaint by plaintiff herein.

23. On February 8, 1950, the United States District Court for the Southern District of New York entered a final decree against Twentieth Century-Fox; National Theatres Corporation; Loew's Incorporated; Warner Bros. Pictures, Inc.; Warner Bros' Pictures Distributing Corporation; Universal Corporation; Universal Film Exchanges, Inc.; and United Artists Corporation, et al. prohibiting, among other things, the buying or leasing of films on a circuit basis, granting clearance between theatres not in substantial competition; and directing that Twentieth Century - Fox and others divorce their production and distribution business from their exhibition business. The decree provided further that the burden of sustaining the legality of a clearance is on the distributor.

V.

Particular Acts of Defendants and the Effects of the Combination, Conspiracy and Monopoly of Plaintiff

24. For the year last past and to the present

time all of the distributor defendants, and each of them, in pursuance and in furtherance of said conspiracy; and in retaining [8] the effects of the conspiracy and in violation of the Anti-Trust laws of the United States, have:

a. Refused to license, sell or furnish motion pictures to plaintiff for exhibition on a first-run basis and to permit plaintiff to compete for such run in open and fair competition with other theatres similarly situated;

b. Permitted chain operated theatres to continue their monopoly of exhibiting motion pictures on early runs;

c. Arbitrarily, unfairly and wrongfully fixed the run, selection or clearance (the time which elapses between runs of the same picture in different theatres) of motion pictures in favor of other theatres, including Fox West Coast, and in discriminating against plaintiff's Paradise Theatre in the Westchester community, and refused to permit plaintiff to compete for first-run play-dates in open and fair competition with other theatres similarly situated, including the first-run Loyola Theatre, also located in Westchester, owned by defendant Fox West Coast Theatres Corporation;

d. Permitted the Loyola Theatre, operated by Fox West Coast to continue its monopoly of exhibiting motion pictures first-run in Westchester;

e. Permitted the Loyola Theatre, operated by Fox West Coast, to take unto itself all the product made available for first-run exhibition in Westchester;

f. Refused to license plaintiff the right to exhibit motion pictures first-run in Westchester thereby perpetuating the monopoly of the Loyola Theatre in exhibiting motion pictures first-run in Westchester;

g. Pursued a like policy in refusing the plaintiff [9] the right to exhibit motion pictures first-run in Westchester;

h. Granted clearance between theatres not in substantial competition;

i. Granted clearance to chain operated theatres in Inglewood over plaintiff's theatre located in Westchester;

j. Required bidding for pictures between theatres not in substantial competition;

k. Refused to license, sell or furnish motion pictures to the plaintiff for exhibition in Westchester seven (7) days after they have been exhibited first-run Los Angeles, except by bidding against Inglewood theatres;

l. Permitted Fox West Coast Theatres Corporation and Warner Bros. Pictures, Inc. theatres to exhibit pictures within seven-day clearance after first-run Los Angeles and denied plaintiff this privilege;

m. Permitted Fox West Coast Theatres to continue first-runs in their theatres without any clearance (moreover);

n. Favored Fox West Coast and other exhibitor defendants and discriminated against the plaintiff with respect to the terms or licensing of motion pictures, including selection, run and clearance,

designation of play dates, rentals, charges, allowances, price, road show engagements, previews, classification of films and other conditions and privileges in connection with exhibition of motion pictures.

o. Permitted chain operated theatres to enjoy a monopoly in the early run exhibition of motion pictures by means other than aforesaid which are presently [10] unknown to plaintiff but which plaintiff prays leave to add to this complaint when the same shall have been more particularly ascertained.

25. The plaintiff believes and therefore alleges that representatives of each of the distributor defendants have inspected or are otherwise aware that plaintiff's Paradise Theatre has new and modern physical equipment, free parking and a seating capacity in excess of 1300.

26. The plaintiff believes and therefore alleges that said defendants are aware that plaintiff's Paradise Theatre is located in Westchester on Sepulveda Boulevard in close proximity to the Loyola Theatre operated by Fox West Coast.

27. The plaintiff believes and therefore alleges that the defendant distributors in refusing to license plaintiff films for first-run exhibition in its Paradise Theatre and otherwise excluding plaintiff from competing for first-run pictures did so each of said defendants knowing that the others were doing the same thing.

28. The plaintiff at all times herein mentioned has desired to operate its theatre first-run and has

been willing, ready and able to pay first-run rentals to exhibit pictures first-run in its Paradise Theatre in Westchester and has so informed the defendant distributors herein. The plaintiff has moreover offered to negotiate for licenses to exhibit pictures in its Paradise Theatre in Westchester seven (7) days after they have been exhibited first-run in Los Angeles, without clearance over theatres in Inglewood or elsewhere.

29. On June 7, 1951, pursuant to the judgment of February 8, 1950, the Government and Twentieth Century-Fox entered into a consent decree which took cognizance of the Loyola Theatre's monopoly of the exhibition of first-run pictures in Westchester. The decree provided that Twentieth [11] Century-Fox's subsidiary National Theatres Corporation has the option of divesting itself of the Loyola Theatre in Westchester or subjecting it to a 60% major product limitation if an independent exhibitor is not afforded reasonable opportunity to procure films on the availability afforded the Loyola.

30. By the reason of monopolies of the defendants in the production, distribution and exhibition of motion pictures and of the combinations, conspiracies and otherwise illegal and wrongful activity and restraint of the defendants as aforesaid, the business of plaintiff as an independent exhibitor has been seriously impaired, injured and damaged and plaintiff has suffered great damage and operating losses and loss of profit and good will and reputation and prestige of its theatre as a fine

motion picture house has been seriously and irreparably impaired and injured and to the unfair and wrongful advantage of exhibitor defendants. Plaintiff has been compelled and is paying unreasonable and discriminatory rentals and has been compelled and is compelled to play inferior pictures on unfair and discriminatory terms to the damage and loss of plaintiff and to the advantage and exhibitor defendants and plaintiff is losing patronage for pictures and good will and otherwise continues to be threatened with further loss and damage by reason of the defendants' violation of the anti-trust laws of the United States.

31. Plaintiff's investment of approximately Four Hundred Eighty-eight Thousand Dollars (\$488,000.00) in the Paradise Theatre predicated on its suitability for operation as a high-class first-run theatre and upon the revenue to be derived from such an operation is placed in serious jeopardy of substantial or total loss.

32. Plaintiff's losses to date, comprising operating loss, good will, loss of reasonable profit and return on [12] investment as a result of defendants' violation of the anti-trust laws as aforesaid, are in excess of \$100,000.00. Plaintiff will suffer damage in the future in a sum or sums at this time unknown in that it now appears that defendants' activities will force plaintiff to close its theatre causing plaintiff further and tremendous losses, and when the extent thereof shall be ascertained, plaintiff seeks leave to amend this complaint to set forth the amount of said losses.

Wherefore, Plaintiff Prays:

1. That summons issue to each of the defendants commanding it to appear herein and to answer the allegations contained in this complaint, and to abide by and perform such orders and decrees as the Court may make in the premises;

2. That plaintiff receive with interest as damages for the injury to its business the sum of One Hundred Thousand Dollars (\$100,000.00) and that the said sum be trebled to Three Hundred Thousand Dollars (\$300,000.00) and that the Court award a reasonable attorney's fee in accordance with Section 4 of the Clayton Act (15 U.S.C.A. 15) in such cases made and provided;

3. That defendants and each of them be permanently enjoined and restrained from each and every one of the unlawful practices alleged in plaintiff's complaint;

4. That the aforesaid combination and conspiracy, contracts, agreements, arrangements, and understandings in restraint of interstate trade and commerce, conspiracy to monopolize, attempts to monopolize and monopolization of interstate trade and commerce be adjudged and decreed to be unlawful, and that the contracts, agreements, arrangements and understandings and practices alleged in this complaint be adjudged and decreed to be in violation of Sections 1 and 2 of the Sherman Act;

5. That the Court adjudge and decree that the [13] defendants have combined and conspired to restrain unreasonably and have conspired to monopolize, attempted to monopolize and have monop-

olized the interstate trade and commerce in the licensing, supply and exhibition of motion pictures in violation of Sections 1 and 2 of the Sherman Act.

6. The defendants and any of their subsidiaries or affiliated companies, their officers, directors, agents and employees and their respective successors, assignees or transferees be enjoined from agreeing, combining, conspiring or contracting with each other or with any other person or corporation whatsoever to restrain, control or eliminate competition among themselves or with others, from restraining in any way and from agreeing on the prices, terms, or conditions in the licensing, supply and exhibition of motion pictures in the State of California or from conspiring or attempting to monopolize, or monopolizing the interstate trade and commerce herein alleged;

7. That the Court issue a preliminary injunction prohibiting the defendants, and each of them, and their officials, directors, agents and employees from continuing to boycott plaintiff's theatre by agreement or concert of action;

8. That plaintiff recover its costs herein; and

9. That the plaintiff have such other and further relief as the Court may deem proper.

JOSEPH L. ALIOTO,

ELWOOD S. KENDRICK,

/s/ By ELWOOD S. KENDRICK,

Attorneys for Plaintiff

Please Take Notice that plaintiff demands trial by jury in this action. [14]

[Endorsed]: Filed September 17, 1951.

[Title of District Court and Cause.]

FIRST AMENDED COMPLAINT

For Damages and Injunctive Relief Under the
Sherman and Clayton Anti-Trust Laws of the
United States

(Jury Demanded)

The above-named plaintiff complains of the
above-named defendants, and each of them, and
alleges as follows:

I.

Jurisdiction and Venue

1. This complaint is filed and these proceedings
are instituted against the above-named defendants
under Sections 15 and 26 of Title 15, U.S.C.A.,
being part of the Act of Congress of July 2, 1890
entitled "An Act to Protect Trade and Commerce
against Unlawful Restraint and Monopolies", as
amended, commonly known as the Sherman Act and
the Clayton Act. The purpose of [24] this action
is to recover damages against the above-named de-
fendants for injuring plaintiff in its business of
exhibiting motion pictures in the Paradise Theatre
at 9110 South Sepulveda Boulevard, Los Angeles
45, California, which injury proximately resulted
from defendants' violations of the anti-trust laws
of the United States; and to restrain and enjoin
the defendants from continuing the illegal monopoly
and the combination, conspiracies and contracts in
restraint of plaintiff's trade and commerce.

2. The business of producing, distributing and
exhibiting motion pictures and the activities of each

branch of the motion-picture industry are within or directly affect trade and commerce among the several states. In the course of producing, distributing and exhibiting motion pictures, there is a constant, continuous stream of trade in commerce between the states and between the territories of the United States, consisting of the solicitation and making of contracts, the assemblage of personnel, property and material at the studios or upon location for the production of pictures, the transportation of negative films from the studios to the laboratories where positive prints of motion-picture films are prepared and from there shipped to film exchanges throughout the United States. The transportation of said film from said exchanges to and from motion picture theatres located in the areas served by the respective exchanges, the interchange of said films between each exchange and other exchanges of the same distributor located in other states and territories of the United States, and the shipment of films from the exchanges throughout the United States to use for scrapping and final disposition.

3. Each of the defendants transacts business and maintains offices in the above-described district and division. [25]

II.

Description of Parties

4. The plaintiff, Paradise Theatre Building Corp., is a California corporation with its principal place of business in the City of Los Angeles, State of California. Plaintiff operates and has since

August 23, 1950, operated the Paradise Theatre at 9110 South Sepulveda Boulevard, Los Angeles 45, California. The Paradise Theatre is a modern building erected just prior to August 23, 1950, at a cost of Four Hundred Eighty-eight Thousand Dollars (\$488,000.00), seats One Thousand Three Hundred Fourteen (1,314) persons and has substantial and adequate free parking facilities and is equipped, staffed and supervised, and plaintiff is and from the last mentioned date has been ready, willing and able to exhibit the best motion pictures at the earliest dates and otherwise operate a "first-run" Los Angeles motion picture theatre. The Paradise is in the fast growing Westchester community of Forty Thousand (40,000) persons in Southwest Los Angeles.

The defendant Fox West Coast operates the Loyola Theatre in the Westchester community on a first-run Los Angeles availability.

5. Defendant Twentieth Century-Fox Film Corporation, is and at all times herein mentioned was a corporation organized and existing under the laws of the State of New York and is engaged in the business of producing, distributing and exhibiting motion pictures either directly or indirectly or through subsidiary or associated companies in various parts of the United States, including Los Angeles, California, and in foreign countries.

6. Defendant National Theatres Corporation, a subsidiary controlled by Twentieth Century - Fox Film Corporation, is and at all times herein mentioned was a corporation organized [26] and exist-

ing under the laws of the State of Delaware, with a place of business at 1609 West Washington Boulevard, Los Angeles, California, and is engaged in the business of exhibiting motion pictures, either directly or through associated corporations in various parts of the United States and more particularly in several of the western states, including California, and in the City of Los Angeles.

7. Defendant Fox West Coast Theatres Corporation, a wholly owned subsidiary of National Theatres Corporation, is and at all times herein mentioned was a corporation organized and existing under the laws of the State of California, with its principal place of business at 1609 West Washington Boulevard, Los Angeles, California, and is engaged in the business of exhibiting motion pictures, either directly or through subsidiary or associated companies in various parts of the United States, and more particularly in several of the western states, including California, and in the City of Los Angeles.

8. Defendant Warner Bros. Pictures, Inc., is and at all times herein mentioned was a motion picture company organized and existing under the laws of the State of Delaware, and is engaged in the business of producing, distributing and exhibiting motion pictures either directly or through subsidiary or associated companies, in various parts of the United States, including Los Angeles, California, and in foreign countries.

9. Defendant Warner Bros. Picture Distribut-

ing Corporation, a wholly owned subsidiary of Warner Bros. Pictures, Inc., is and at all times herein mentioned was a corporation organized and existing under the laws of the State of New York and is engaged in the business of distributing motion pictures in various parts of the United States, including Los Angeles, California, and in foreign countries.

10. Defendant Paramount Pictures, Inc., is and at all [27] times herein mentioned was a corporation organized and existing under the laws of the State of New York and is engaged in the business of producing, distributing and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States, including Los Angeles, California, and in foreign countries.

11. Defendant Paramount Film Distributing Corporation, Inc., a wholly owned subsidiary of Paramount Pictures, Inc., is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Delaware, and is engaged in distributing motion pictures in various parts of the United States, including Los Angeles, California, and in foreign countries.

12. Defendant Loew's Incorporated, is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Delaware, and is engaged in the business of producing, distributing and exhibiting motion pictures, either directly or through subsidiary or asso-

ciated companies, in various parts of the United States, including Los Angeles, California, and in foreign countries.

13. Defendant Universal Corporation, is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Delaware. Prior to on or about May 25, 1943, Universal Pictures Company, Inc. was a subsidiary controlled by Universal Corporation, which, prior to the last-mentioned date, was a corporation organized and existing under the laws of the State of Delaware and engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States, including Los Angeles, California, and in foreign countries. On the last-mentioned date the said corporations merged under the name of Universal [28] Pictures Company, Inc.

14. Defendant Universal Film Exchanges, Inc. is a wholly owned subsidiary of Universal Pictures Company, Inc., or Universal Corporation, and is and at all times herein mentioned was a corporation organized and existing under the laws of the State of New York, and is engaged in the business of distributing motion pictures in various parts of the United States, including Los Angeles, California, and in foreign countries.

15. Defendant United Artists Corporation is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Delaware, and is engaged in the distribution of

motion pictures in various parts of the United States, including Los Angeles, California, and in foreign countries.

16. The true names or capacity, whether corporate, associate or otherwise of defendants Doe One to Doe Ten, inclusive, are unknown to plaintiff and plaintiff therefore designates them by such fictitious names and when their true names are discovered this complaint and these proceedings will be amended accordingly.

17. All of the defendants hereinabove described are engaged in production and/or distribution of motion pictures either directly or through subsidiary companies and are sometimes hereinafter referred to as producers, distributors and producer-distributors. The defendants Fox West Coast Theatres Corporation, National Theatres Corporation are sometimes hereinafter referred to collectively as Fox West Coast.

18. Fox West Coast directly or through subsidiary companies owns, controls and is affiliated with upwards of Two Hundred Fifty (250) theatres in Los Angeles and vicinity. [29]

III.

The Combination, Conspiracy and Monopoly

19. All of the defendants, each well knowing and acquiescing in the acts of the other, have for many years last past conspired and combined with each other and each corporation within itself, by and through its officers and employees, unreasonably to restrain and monopolize trade and com-

merce and pursuant to said combinations and conspiracies have, in effect, unreasonably restrained and monopolized trade and commerce in the production, distribution and exhibition of motion pictures in the United States, including the State of California, and, more particularly, in the City of Los Angeles and vicinity, all in violation of Sections 1 and 2 of the Sherman Act.

20. As a part and parcel of the aforesaid conspiracy the distributor defendants have more particularly:

a) Refused to license, sell or furnish motion pictures to plaintiff for exhibition on a first-run Los Angeles availability;

b) Refused plaintiff the right to license motion pictures on such a run as to enable plaintiff to compete with the defendant's Fox West Coast Loyola Theatre;

c) Agreed to permit the defendant's National Theatres and Fox West Coast to create, establish, maintain and perpetuate a buying pool and combine in Southern California, including the City of Los Angeles, California;

d) The said buying pool and combine was founded for the purpose and within the intent and effect of giving the National Theatres and Fox West Coast a monopolistic buying power which has been used by said National Theatre and Fox West Coast to control the [30] licensing of film to Fox West Coast Theatres in Southern California and Los Angeles on preferential clearances, terms and conditions.

IV.

Effect of Government's Major Motion Picture Case

21. Under the provisions of Section 16 of Title 15, U.S.C.A., a final judgment rendered in a suit brought by the United States to the effect that a defendant has violated the anti-trust laws shall be prima facie evidence against such defendant in any suit brought by any other party against such defendant under said laws as to all matters respecting which the said judgment would be an estoppel as between the parties thereto.

22. On July 20, 1938, the United States of America filed a complaint in the District Court of the United States for the Southern District of New York against Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's, Inc.; RKO Radio Pictures, Inc.; Columbia Pictures Corporation; United Artists Corporation; Universal Corporation; Universal Pictures Company, Inc.; Twentieth Century - Fox and National Theatres Corporation, among others, charging violations of the anti-trust laws. (United States, v. Paramount Pictures, et al., Civil Action No. 87-273.) On November 14, 1940, an amended and supplemental complaint was filed against the same defendants. Before trial, negotiations for settlement resulted in the entry of a consent decree, reserving to the United States the right at the end of a three-year trial period to seek the relief prayed for in the amended complaint. At the end of the three-year period, the United States moved for trial against all defendants. The District Court, after trial,

found that defendants had violated Sections 1 and 2 of the Sherman Act. [31]

23. On May 3, 1948, the Supreme Court of the United States affirmed the judgment of the District Court that defendants had violated Sections 1 and 2 of the Sherman Act. This judgment in favor of the United States would be an estoppel between the parties thereto as to the monopoly, conspiracies, combination and contracts pleaded in this complaint by plaintiff herein.

24. On February 8, 1950, the United States District Court for the Southern District of New York entered a final decree against Twentieth Century-Fox; National Theatres Corporation; Loew's Incorporated; Warner Bros. Pictures, Inc.; Warner Bros. Pictures Distributing Corporation; Universal Corporation; Universal Film Exchanges, Inc.; and United Artists Corporation, et al. prohibiting, among other things, the buying or leasing of films on a circuit basis, granting clearance between theatres not in substantial competition; and directing that Twentieth Century-Fox and others divorce their production and distribution business from their exhibition business. The decree provided further that the burden of sustaining the legality of a clearance is on the distributor.

V.

Particular Acts of Defendants and the Effects of the Combination, Conspiracy and Monopoly on Plaintiff

25. For the year last past and to the present

time all of the distributor defendants, and each of them, in pursuance and in furtherance of said conspiracy; and in retaining the effects of the conspiracy and in violation of the Anti-Trust laws of the United States, have:

a) Refused to license, sell or furnish motion pictures to plaintiff for exhibition on a first-run Los Angeles availability. Refused plaintiff the right to [32] license motion pictures on such a run so as to enable it to compete with Fox West Coast's Loyola Theatre;

b) Permitted chain operated theatres to continue their monopoly of exhibiting motion pictures on early runs;

c) Arbitrarily, unfairly and wrongfully fixed the run selection or clearances (the time which elapses between runs of the same pictures in different theatres) of motion pictures in favor of other theatres, including Fox West Coast, to preclude plaintiff's Paradise Theatre in the Westchester community from operating on a first-run Los Angeles availability;

d) Permitted the Loyola Theatre, operated by Fox West Coast, to continue its monopoly in Westchester of exhibiting motion pictures on a first-run Los Angeles availability;

e) Refused to license plaintiff the right to exhibit motion pictures on a first-run Los Angeles availability thereby perpetuating the monopoly of the Loyola Theatre in exhibiting motion pictures in Westchester on a first-run Los Angeles availability;

f) Pursued a like policy in refusing plaintiff

the right to exhibit motion pictures in Westchester on a first-run Los Angeles availability;

g) Granted clearances between theatres not in substantial competition with plaintiff, including, among others, theatres in Hollywood, theatres on Wilshire Boulevard, a theatre on Western Avenue and theatres in downtown Los Angeles;

h) Granted clearances to chain operated theatres in Inglewood over plaintiff's theatre located in Westchester. The said theatres include the Imperial, Rio, Southside, United Artists, Academy, Fox, Fifth Avenue, Century Drive-In, [33] and the Ritz;

i) Required bidding for pictures between theatres not in substantial competition, i.e. between the Paradise Theatre and the Imperial, Rio, Southside, United Artists, Academy, Fox, Fifth Avenue, Century Drive-In, and Ritz Theatres;

j) Refused to regularly license, sell or furnish motion pictures to the plaintiff for exhibition in Westchester seven (7) days after first-run Los Angeles closing except by bidding against Inglewood theatres;

k) Permitted Fox West Coast Theatres Corporation's Academy Theatre and Warner's Beverly Theatre to exhibit pictures within seven-day clearance after first-run Los Angeles closing and denied this availability to plaintiff although plaintiff is farther from downtown Los Angeles and Hollywood than the aforesaid Fox West Coast and Warner theatres;

l) Permitted Fox West Coast Theatres to con-

tinue first-runs in their theatres without any clearance (moreover);

m) Favored Fox West Coast and other exhibitor defendants and discriminated against the plaintiff with respect to the terms or licensing of motion pictures, including selection, run and clearance, designation of play dates, rentals, charges, allowances, price, road show engagements, previews, classification of films and other conditions and privileges in connection with exhibition of motion pictures.

n) Permitted chain operated theatres to enjoy a monopoly in the early run exhibition of motion pictures by means other than aforesaid which are presently unknown to plaintiff but which plaintiff prays leave to add to this [34] complaint when the same shall have been more particularly ascertained.

26. The plaintiff believes and therefore alleges that representatives of each of the distributor defendants have inspected or are otherwise aware that plaintiff's Paradise Theatre has new and modern physical equipment, free parking and a seating capacity in excess of 1,300.

27. The plaintiff believes and therefore alleges that said defendants are aware that plaintiff's Paradise Theatre is located in Westchester on Sepulveda Boulevard in close proximity to the Loyola Theatre operated by Fox West Coast as a first-run Los Angeles theatre.

28. The plaintiff believes and therefore alleges that the defendant distributors in refusing to license plaintiff films for exhibition first-run Los Angeles in its Paradise Theatre and otherwise ex-

cluding plaintiff from competing for pictures on a first-run Los Angeles availability did so each of said defendants knowing that the others were doing the same thing.

29. The plaintiff believes and therefore alleges that at all times since its completion and opening of the Paradise Theatre that the defendant Fox West Coast has used the buying power of its many theatres to obtain film from the distributor defendants on preferential clearances, terms and conditions to those offered plaintiff.

30. The plaintiff at all times herein mentioned has desired to operate its theatre first-run Los Angeles availability and has been willing, ready and able to pay first-run rentals to exhibit pictures on a first-run Los Angeles availability in its Paradise Theatre in Westchester and has so informed the defendant distributors herein. The plaintiff has moreover offered to negotiate for licenses to exhibit pictures in its [35] Paradise Theatre in Westchester seven (7) days after they have been exhibited first-run in Los Angeles, without clearance over theatres in Inglewood or elsewhere.

31. On June 7, 1951, pursuant to the judgment of February 8, 1950, the Government and Twentieth Century-Fox entered into a consent decree which took cognizance of the Loyola Theatre's monopoly of the exhibition of first-run pictures in Westchester. The decree provided that Twentieth Century-Fox's subsidiary National Theatres Corporation has the option of divesting itself of the Loyola Theatre in Westchester or subjecting it to

a 60% major product limitation if an independent exhibitor is not afforded reasonable opportunity to procure films on the availability afforded the Loyola.

32. By the reason of monopolies of the defendants in the production, distribution and exhibition of motion pictures and of the combinations, conspiracies and otherwise illegal and wrongful activity and restraint of the defendants as aforesaid, the business of plaintiff as an independent exhibitor has been seriously impaired, injured and damaged and plaintiff has suffered great damage and operating losses and loss of profits and good will and reputation and prestige of its theatre as a fine motion picture house has been seriously and irreparably impaired and injured and to the unfair and wrongful advantage of exhibitor defendants. Plaintiff has been compelled and is paying unreasonable and discriminatory rentals and has been compelled and is compelled to play inferior pictures on unfair and discriminatory terms to the damage and loss of plaintiff and to the advantage of exhibitor defendants and plaintiff is losing patronage for pictures and good will and otherwise continues to be threatened with further loss and damage by reason of the defendants' violation of the anti-trust [36] laws of the United States.

33. Plaintiff's investment of approximately Four Hundred Eighty-eight Thousand Dollars (\$488,000.00) in the Paradise Theatre predicated on its suitability for operation as a high-class first-run theatre and upon the revenue to be derived from

such an operation is placed in serious jeopardy of substantial or total loss.

34. Plaintiff's losses to date, comprising operating loss, good will, loss of reasonable profit and return on investment as a result of defendants' violation of the anti-trust laws as aforesaid, are in excess of \$100,000.00. Plaintiff will suffer damages in the future in a sum or sums at this time unknown in that it now appears that defendants' activities will force plaintiff to close its theatre causing plaintiff further and tremendous losses, and when the extent thereof shall be ascertained, plaintiff seeks leave to amend this complaint to set forth the amount of said losses.

Wherefore, Plaintiff Prays:

1. That summons issue to each of the defendants, commanding it to appear herein and to answer the allegations contained in this complaint, and to abide by and perform such orders and decrees as the Court may make in the premises;

2. That plaintiff receive with interest as damages for the injury to its business the sum of One Hundred Thousand Dollars (\$100,000.00) and that the said sum be trebled to Three Hundred Thousand Dollars (\$300,000.00) and that the Court award a reasonable attorney's fee in accordance with Section 4 of the Clayton Act (15 U.S.C.A. 15) in such cases made and provided;

3. That defendants and each of them be permanently enjoined and restrained from each and every one of the unlawful practices alleged in plaintiff's complaint;

4. That the aforesaid combination and conspiracy, [37] contracts, agreements, arrangements, and understandings in restraint of interstate trade and commerce, conspiracy to monopolize, attempts to monopolize and monopolization of interstate trade and commerce be adjudged and decreed to be unlawful, and that the contracts, agreements, arrangements and understandings and practices alleged in this complaint be adjudged and decreed to be in violation of Sections 1 and 2 of the Sherman Act;

5. That the Court adjudge and decree that the defendants have combined and conspired to restrain unreasonably and have conspired to monopolize, attempted to monopolize and have monopolized the interstate trade and commerce in the licensing, supply and exhibition of motion pictures in violation of Sections 1 and 2 of the Sherman Act.

6. The defendants and any of their subsidiaries or affiliated companies, their officers, directors, agents and employees and their respective successors, assignees or transferees be enjoined from agreeing, combining, conspiring or contracting with each other or with any other person or corporation whatsoever to restrain, control or eliminate competition among themselves or with others, from restraining in any way and from agreeing on the prices, terms or conditions in the licensing, supply and exhibition of motion pictures in the State of California or from conspiring or attempting to monopolize, or monopolizing the interstate trade and commerce herein alleged;

7. That the Court issue a preliminary injunction prohibiting the defendants, and each of them, and their officials, directors, agents and employees from continuing to boycott plaintiff's theatre by agreement or concert of action;

8. That plaintiff recover its costs herein; and

9. That the plaintiff have such other and further relief as the Court may deem proper.

JOSEPH L. ALIOTO,
ELWOOD S. KENDRICK,
/s/ By ELWOOD S. KENDRICK,
Attorneys for Plaintiff

Please Take Notice that plaintiff demands trial by jury in this action. [39]

Acknowledgment of Service Attached. [40]

[Endorsed]: Filed January 23, 1952.

[Title of District Court and Cause.]

ANSWER OF LOEW'S, INCORPORATED

Defendant Loew's, Incorporated, for answer to plaintiff's first amended complaint, admits, denies and alleges as follows:

First Defense

1. Denies the allegations of Paragraph 1 of said complaint.

2. Denies the allegations of Paragraph 2 of said complaint except as hereinafter admitted or al-

leged. Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph with respect to defendants other than this defendant. Admits [41] that many, but not all, phases of the distribution activities of Loew's Incorporated are in or directly affect trade and commerce among the several states.

3. Denies the allegations of Paragraph 3 of said complaint except as hereinafter admitted or alleged. Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph with respect to defendants other than this defendant. Admits that Loew's, Incorporated transacts business and maintains an office in the Southern District of California, Central Division.

4. Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of said complaint except admits that the Paradise Theatre is a modern building located at 9110 South Sepulveda Blvd. in that section of the City of Los Angeles sometimes known as "Westchester".

5. Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17 and 18 of said complaint.

6. Denies the allegations of Paragraph 12 of said complaint except as hereinafter admitted or

alleged. Admits and alleges that Loew's, Incorporated is and for many years past has been a corporation organized and existing under the laws of the State of Delaware, is engaged in the business of producing motion pictures in various parts of the United States, principally in the [41-A] State of California, and distributing motion pictures in various parts of the United States, including Los Angeles, California, and owns stock in corporations which own or operate motion picture theatres in various parts of the United States.

7. Denies the allegations of Paragraphs 19 and 20 of said complaint.

8. Denies the allegations of Paragraphs 21, 22, 23, 24, and 31 of said complaint except admits and alleges that on July 20, 1938, the United States of America commenced an action in the United States District Court for the Southern District of New York against Paramount Pictures, Inc., Paramount Film Distributing Corporation, Loew's, Inc., RKO Radio Pictures, Inc., Columbia Pictures Corporation, United Artists Corporation, Universal Corporation, Universal Pictures Company, Inc., Twentieth Century-Fox Film Corporation, and National Theatres Corporation, among others, being Equity No. 87-273 in the records and files of said Court, and that the proceedings had and the judgments and decrees entered in said action are as shown in the records and files of said Court in said action.

9. Denies the allegations of Paragraph 25 of said complaint.

10. Denies the allegations of Paragraphs 26, 27, 28, 29 and 30 of said complaint except as hereinafter admitted or alleged. Alleges that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraphs with respect to defendants other [42] than this defendant. Admits that Loew's, Incorporated is and has been aware that the Paradise Theatre is a modern building with new and modern physical equipment and is located at 9110 South Sepulveda Boulevard, approximately 2000 feet removed from the Loyola Theatre, which is located at the intersection of Manchester Avenue and Sepulveda Boulevard.

11. Denies the allegations of Paragraphs 32, 33 and 34.

Second Defense

12. Said complaint fails to state a claim against this defendant upon which relief can be granted.

Dated: March 18, 1952.

O'MELVENY & MYERS,
HOMER I. MITCHELL,
PHILIP F. WESTBROOK, JR.,
BENNETT W. PRIEST,

/s/ By HOMER I. MITCHELL,

Attorneys for defendant Loew's,
Incorporated [43]

Affidavit of Service by Mail Attached. [44]

[Endorsed]: Filed March 18, 1952.

[Title of District Court and Cause.]

ANSWER OF UNIVERSAL PICTURES COMPANY, INC. AND UNIVERSAL FILM EXCHANGES, INC.

Defendants Universal Pictures Company, Inc. (sued herein as Universal Corporation) and Universal Film Exchanges, Inc., for answer to plaintiff's first amended complaint, admit, deny and allege as follows:

First Defense

1. Deny the allegations of Paragraph 1 of said complaint.

2. Deny the allegations of Paragraph 2 of said complaint except as hereinafter admitted or alleged. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations [45] of said paragraph with respect to defendants other than these defendants. Admit that many, but not all, phases of the distribution activities of Universal Film Exchanges, Inc. are in or directly affect trade and commerce among the several states.

3. Deny the allegations of Paragraph 3 of said complaint except as hereinafter admitted or alleged. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph with respect to defendants other than these defendants. Admit that Universal Pictures Company, Inc. and Universal Film Exchanges, Inc. transact busi-

ness and maintain an office in the Southern District of California, Central Division.

4. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of said complaint except admit that the Paradise Theatre is a modern building located at 9110 South Sepulveda Blvd. in that section of the City of Los Angeles sometimes known as "Westchester".

5. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17 and 18 of said complaint.

6. Deny the allegations of Paragraphs 13 and 14 of said complaint except as hereinafter admitted or alleged. Admit and allege that Universal Film Exchanges, Inc. is a wholly owned subsidiary of Universal Pictures Co., Inc., is and for many years [46] past has been a corporation organized and existing under the laws of the State of New York, and is engaged in the business of distributing motion pictures in various parts of the United States, including Los Angeles, California. Admit and allege that Universal Pictures Company, Inc. is and for many years past has been a corporation organized and existing under the laws of the State of Delaware and is engaged in the business of producing motion pictures in various parts of the United States, principally in California. Admit and allege that, prior to on or about May 25, 1943, the

corporate name of Universal Pictures Company, Inc. was Universal Corporation, and Universal Pictures Company, Inc. was a subsidiary of Universal Corporation and that, on or about said date, Universal Pictures Company, Inc. was merged into Universal Corporation, and the corporate name of Universal Corporation was changed to Universal Pictures Company, Inc.

7. Deny the allegations of Paragraphs 19 and 20 of said complaint.

8. Deny the allegations of Paragraphs 21, 22, 23, 24 and 31 of said complaint except as hereinafter admitted or alleged. Admit that, on July 20, 1938, the United States of America commenced an action in the United States District Court for the Southern District of New York against Paramount Pictures, Inc., Paramount Film Distributing Corporation, Loew's, Inc., RKO Radio Pictures, Inc., Columbia Pictures Corporation, United Artists Corporation, Universal Corporation, Universal Pictures Company, Inc., Twentieth Century-Fox Film Corporation, and National Theatres Corporation, among others, being Equity No. 87-273 in the records and files of said Court, and that the proceedings [47] had and the judgment and decrees entered in said action are as shown in the records and files of said Court in said action.

9. Deny the allegations of Paragraph 25 of said complaint.

10. Deny the allegations of Paragraphs 26, 27, 28, 29 and 30 of said complaint except as herein-

after admitted or alleged. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraphs with respect to defendants other than these defendants. Admit that Universal Film Exchanges, Inc. is and has been aware that the Paradise Theatre is a modern building with new and modern physical equipment and is located at 9110 South Sepulveda Boulevard, approximately 2000 feet removed from the Loyola Theatre, which is located at the intersection of Manchester Avenue and Sepulveda Boulevard.

11. Deny the allegations of Paragraphs 32, 33 and 34.

Second Defense

12. Said complaint fails to state a claim against these defendants upon which relief can be granted.

Dated: March 18, 1952.

O'MELVENY & MYERS,
HOMER I. MITCHELL,
PHILIP F. WESTBROOK, JR.,
BENNETT W. PRIEST,

/s/ By HOMER I. MITCHELL,
Attorneys for Defendants Universal Pictures Company, Inc. and Universal Film Exchanges, Inc.

Affidavit of Service by Mail Attached. [49]

[Endorsed]: Filed March 18, 1952.

[Title of District Court and Cause.]

ANSWER OF WARNER BROS. PICTURES,
INC. AND WARNER BROS. PICTURES
DISTRIBUTING CORPORATION

Defendants Warner Bros. Pictures, Inc. and Warner Bros. Pictures Distributing Corporation, for answer to plaintiff's first amended complaint, admit, deny and allege as follows:

First Defense

1. Deny the allegations of Paragraph 1 of said complaint.

2. Deny the allegations of Paragraph 2 of said complaint except as hereinafter admitted or alleged. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph with respect to defendants other than these [50] defendants. Admit that many, but not all, phases of the distribution activities of Warner Bros. Pictures Distributing Corporation are in or directly affect trade and commerce among the several states.

3. Deny the allegations of Paragraph 3 of said complaint except as hereinafter admitted or alleged. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph with respect to defendants other than these defendants. Admit that Warner Bros. Pictures, Inc., and Warner Bros. Pictures Distributing Corporation each

transact business and maintain an office in the Southern District of California, Central Division.

4. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of said complaint except admit that the Paradise Theatre is a modern building located at 9110 South Sepulveda Blvd. in that section of the City of Los Angeles sometimes known as "Westchester".

5. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of said complaint.

6. Deny the allegations of Paragraphs 8 and 9 of said complaint except as hereinafter admitted or alleged. Admit and allege that Warner Bros. Pictures, Inc. is and for many years past [51] has been a corporation organized and existing under the laws of the State of Delaware, is engaged in the business of producing motion pictures in various parts of the United States, principally in the State of California, and owns stock in corporations which own or operate theatres in various parts of the United States, including Los Angeles, California. Admit and allege that Warner Bros. Pictures Distributing Corporation is a wholly owned subsidiary of Warner Bros. Pictures, Inc., is and for many years past has been a corporation organized and existing under the laws of the State of New York, and is engaged in the business of distributing mo-

tion pictures in various parts of the United States, including Los Angeles, California.

7. Deny the allegations of Paragraphs 19 and 20 of said complaint.

8. Deny the allegations of Paragraphs 21, 22, 23, 24 and 31 of said complaint except admit and allege that, on July 20, 1938, the United States of America filed a petition in the United States District Court for the Southern District of New York against Paramount Pictures Inc., Paramount Film Distributing Corporation, Loew's, Inc., RKO Radio Pictures, Inc., Columbia Pictures Corporation, United Artists Corporation, Universal Corporation, Universal Pictures Company, Inc., Twentieth Century-Fox Film Corporation, and National Theatres Corporation, among others, being Equity No. 87-273 in the records and files of said Court, and that the proceedings had and the judgments and decrees entered in said action are as shown in the records and files of said Court in said action. [52]

9. Deny the allegations of Paragraph 25 of said complaint.

10. Deny the allegations of Paragraphs 26, 27, 28, 29 and 30 of said complaint except as hereinafter admitted or alleged. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraphs with respect to defendants other than these defendants. Admit that Warner Bros. Pictures Distributing Corporation is and has been aware that the Paradise Theatre is a modern

building with new and modern physical equipment and is located at 9110 South Sepulveda Boulevard, approximately 2000 feet removed from the Loyola Theatre, which is located at the intersection of Manchester Avenue and Sepulveda Boulevard.

11. Deny the allegations of Paragraphs 32, 33 and 34.

Second Defense

12. Said complaint fails to state a claim against these defendants upon which relief can be granted.

Dated: March 18, 1952.

O'MELVENY & MYERS,
HOMER I. MITCHELL,
PHILIP F. WESTBROOK, JR.,
BENNETT W. PRIEST,

/s/ By HOMER I. MITCHELL,
Attorneys for defendants Warner Bros. Pictures,
Inc. and Warner Bros. Pictures Distributing
Corporation. [53]

Affidavit of Service by Mail Attached. [54]

[Endorsed]: Filed March 18, 1952. [53]

[Title of District Court and Cause.]

ANSWER OF PARAMOUNT PICTURES INC.
AND PARAMOUNT FILM DISTRIBUT-
ING CORPORATION

Defendants Paramount Pictures Inc., a dissolved corporation, and Paramount Film Distributing Cor-

poration, for answer to plaintiff's first amended complaint, admit, deny and allege as follows:

First Defense

1. Deny the allegations of Paragraph 1 of said complaint.

2. Deny the allegations of Paragraph 2 of said complaint except as hereinafter admitted or alleged. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of said [55] paragraph with respect to defendants other than these defendants. Admit that many, but not all, phases of the distribution activities of Paramount Film Distributing Corporation are in or directly affect trade and commerce among the several states.

3. Deny the allegations of Paragraph 3 of said complaint except as hereinafter admitted or alleged. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph with respect to defendants other than these defendants. Admit that, prior to December 31, 1949, Paramount Pictures Inc. transacted business and maintained an office in the Southern District of California, Central Division, and that subsequent to December 31, 1949, Paramount Film Distributing Corporation has transacted business and maintained offices in said district and division.

4. Allege that these defendants are without knowledge or information sufficient to form a be-

lief as to the truth of the allegations of Paragraph 4 of said complaint except admit that the Paradise Theatre is a modern building located at 9110 South Sepulveda Blvd. in that section of the City of Los Angeles sometimes known as "Westchester".

5. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17 and 18 of said complaint.

6. Deny the allegations of Paragraphs 10 and 11 of [56] said complaint except as hereinafter admitted or alleged. Admit and allege that, prior to December 31, 1949, Paramount Pictures Inc. was a corporation organized and existing under the laws of the State of New York and was engaged in the business of producing and distributing motion pictures in various parts of the United States, including Los Angeles, California; that, prior to December 31, 1949, Paramount Pictures Inc. owned stock in corporations which owned or operated motion picture theatres in various parts of the United States, including Los Angeles, California; and that, on December 30, 1949, Paramount Pictures Inc. was duly dissolved. Admit and allege that Paramount Film Distributing Corporation is and for many years past has been a corporation organized and existing under the laws of the State of Delaware, and is engaged in the business of distributing motion pictures in various parts of the United States, including, since December 31, 1949, Los Angeles, California.

7. Deny the allegations of Paragraphs 19 and 20 of said complaint.

8. Deny the allegations of Paragraphs 21, 22, 23, 24 and 31 of said complaint except admit and allege that, on July 20, 1938, the United States of America commenced an action in the United States District Court for the Southern District of New York against Paramount Pictures Inc., Paramount Film Distributing Corporation, Loew's, Inc., RKO Radio Pictures, Inc., Columbia Pictures Corporation, United Artists Corporation, Universal Corporation, Universal Pictures Company, Inc., Twentieth Century-Fox Film Corporation, and National Theatres Corporation, among others, being Equity No. 87-273 in the records and files of said [57] Court, and that the proceedings had and the judgments and decrees entered in said action are as shown in the records and files of said Court in said action.

9. Deny the allegations of Paragraph 25 of said complaint.

10. Deny the allegations of Paragraphs 26, 27, 28, 29 and 30 of said complaint except as hereinafter admitted or alleged. Allege that these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraphs with respect to defendants other than these defendants. Admit that Paramount Film Distributing Corporation is and has been aware that the Paradise Theatre is a modern building with new and modern physical equipment and

is located at 9110 South Sepulveda Boulevard, approximately 2000 feet removed from the Loyola Theatre, which is located at the intersection of Manchester Avenue and Sepulveda Boulevard.

11. Deny the allegations of Paragraphs 32, 33 and 34.

Second Defense

12. Said complaint fails to state a claim against these defendants upon which relief can be granted.

Dated: March 18, 1952.

O'MELVENY & MYERS,
HOMER I. MITCHELL,
PHILIP F. WESTBROOK, JR.,
BENNETT W. PRIEST,

/s/ By HOMER I. MITCHELL,
Attorneys for defendants Paramount Pictures Inc.
and Paramount Film Distributing Corpora-
tion. [58]

Affidavit of Service by Mail Attached. [59]

[Endorsed]: Filed March 18, 1952.

[Title of District Court and Cause.]

ANSWER OF FOX WEST COAST THEATRES
CORPORATION, NATIONAL THEATRES
CORPORATION AND TWENTIETH CEN-
TURY-FOX FILM CORPORATION TO
FIRST AMENDED COMPLAINT

Defendants Fox West Coast Theatres Corpora-
tion, National Theatres Corporation and Twentieth

Century-Fox Film Corporation severally answer plaintiff's First Amended Complaint herein as follows:

I.

Deny each and every allegation in paragraph 1 contained.

II.

Answering paragraph 2 defendants allege that some, but not all, phases of the business of producing, distributing and exhibiting motion pictures are within or directly affect trade or commerce among the several states. Defendants deny that the licensing for exhibition or exhibition of motion pictures in plaintiff's Paradise Theatre is within or directly affects trade or commerce among the [60] several states.

Except as hereinabove otherwise answered, defendants deny each and every allegation contained in paragraph 2.

III.

Deny that defendant National Theatres Corporation transacts business or maintains offices in the Southern District of California. Admit that defendants Twentieth Century-Fox Film Corporation and Fox West Coast Theatres Corporation transact business and maintain offices in the Southern District of California.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 with respect to the business of other defendants.

IV.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4, except defendants admit that Fox West Coast Theatres Corporation owns the stock of a corporation which operates the Loyola Theatre in the Westchester community and that said theatre generally exhibits motion pictures distributed by Twentieth Century-Fox Film Corporation and occasionally motion pictures distributed by other distributors of motion pictures on a first run Los Angeles availability.

Except as hereinabove expressly admitted or alleged, deny each and every allegation contained in paragraph 4.

V.

Admit that defendant Twentieth Century - Fox Film Corporation is a corporation organized and existing under the laws of the State of New York and that it is engaged in the business of producing and distributing motion pictures in various parts of the United States, including Los Angeles, California. Allege that said defendant owns in whole or in part the stock of subsidiary corporations which exhibit or which own the stock of corporations which exhibit motion pictures. [61]

Except as hereinabove expressly admitted or alleged, deny each and every allegation contained in paragraph 5.

VI.

Admit that defendant National Theatres Corporation is a corporation organized and existing un-

der the laws of the State of Delaware and that it is a wholly owned subsidiary of defendant Twentieth Century-Fox Film Corporation. Allege that said defendant owns in whole or in part the stock of corporations which exhibit motion pictures or which themselves owns the stock of corporations which exhibit motion pictures in several of the western states, including California and the City of Los Angeles.

Except as hereinabove expressly admitted and alleged, deny each and every allegation contained in paragraph 6.

VII.

Admit that defendant Fox West Coast Theatres Corporation is a wholly owned subsidiary of defendant National Theatres Corporation and that it has its principal place of business at 1609 West Washington Boulevard, Los Angeles, California. Deny that it is a corporation organized and existing under the laws of the State of California and in that regard allege that said defendant is a corporation organized and existing under the laws of the State of Delaware. Allege that said defendant owns in whole or in part the stock of corporations which for the most part are engaged in the business of operating motion picture theatres in the State of California. One of said corporations operates a single theatre in the State of Nevada and there are eight theatres operated in the State of Arizona by corporations, the stock of which is owned by said defendant.

Except as hereinabove expressly admitted and

alleged, deny each and every allegation contained in paragraph 7.

VIII.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 8, 9, 10, 11, 12, 13, 14 and 15. [62]

IX.

Answering paragraph 18 defendants allege that Fox West Coast Theatres Corporation owns in whole or in part the stock of corporations which in turn own or operate approximately one hundred theatres in the County of Los Angeles, and except as so alleged deny the allegations in said paragraph contained.

X.

Deny each and every allegation contained in paragraphs 19 and 20.

XI.

Answering paragraph 21 of plaintiff's First Amended Complaint, defendants state that the provisions of Section 16 of Title 15 U.S.C.A. speak for themselves.

XII.

Answering paragraphs 22 through 24 of plaintiff's First Amended Complaint, defendants allege that on or about July 20, 1938, the United States of America instituted an action against certain defendants, including Twentieth Century-Fox Film Corporation and National Theatres Corporation, in the District Court of the United States for the

Southern District of New York entitled "United States of America v. Paramount Pictures, Inc., et al." bearing Equity No. 87-273, and that the proceedings taken therein are as disclosed in the files and records of said action and the appeals taken in said action.

Defendants further allege that none of the acts alleged to have been committed by defendants herein with respect to plaintiff or plaintiff's Paradise Theatre were in issue in said action of United States v. Paramount Pictures, Inc., et al., or were presented to or considered by the court therein and that the issues in United States v. Paramount were totally and completely different from the issues presented herein. [63]

Except as hereinabove otherwise answered, deny each and all of the allegations contained in paragraphs 22, 23 and 24.

XIII.

Deny each and every allegation in paragraph 25 contained.

XIV.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 26 and 27, except that defendants admit that they were and are aware that plaintiff's Paradise Theatre is located in Westchester on Sepulveda Boulevard, and that it is close to the Loyola Theatre, which is operated by a wholly owned subsidiary of defendant Fox West Coast Theatres Corporation. Defendant Twentieth Century-Fox Film Corporation admits that it

was and is aware that plaintiff's Paradise Theatre has new physical equipment, free parking and a seating capacity in excess of thirteen hundred. With respect to the playing position of the said Loyola Theatre defendants refer to paragraph IV above.

XV.

Deny each and every allegation contained in paragraphs 28 and 29.

XVI.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

XVII.

Deny each and every allegation in paragraph 31 contained and in that regard allege that the decree therein referred to will speak for itself.

XVIII.

Deny each and every allegation contained in paragraphs 32, 33 and 34.

Second Defense

Said complaint does not state a claim against these defendants on which relief can be granted.

Third Defense

Plaintiff with full knowledge of all the material facts sought and accepted the benefits of the transactions of which it now complains and is in *pari delicto* with defendants, and each of them, with respect to each and all of the acts which are alleged in the First Amended Complaint to have been done.

That plaintiff has sought and accepted the benefits of the acts of which it now complains and is estopped from demanding any relief on account thereof.

Fourth Defense

That this court is without jurisdiction over defendant National Theatres Corporation. That said defendant is a corporation organized under the laws of the State of Delaware and has its principal office and place of business in the City of New York. Said defendant maintains no office in nor does it engage in any business in the State of California and it neither resides, is found or has any agent in the State of California.

Wherefore, these answering defendants pray that plaintiff's First Amended Complaint be dismissed as to these answering defendants and that plaintiff take nothing in this action as against these answering defendants and that said defendants may have and recover from plaintiff their costs herein incurred and to be taxed herein.

NEWLIN, HOLLEY, TACKABURY
& JOHNSTON,

/s/ By FRANK R. JOHNSTON,

/s/ By HUDSON B. COX,

Attorneys for Defendants Fox West Coast Theatres Corporation, National Theatres Corporation and Twentieth Century-Fox Film Corporation. [65]

Affidavit of Service by Mail Attached. [66]

[Endorsed]: Filed March 18, 1952.

[Title of District Court and Cause.]

DEFENDANTS' PROPOSED JURY
INSTRUCTIONS

Defendants Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation, Paramount Pictures, Inc., Paramount Film Distributing Corporation, Loew's, Incorporated, Universal Pictures Company, Inc., Universal Film Exchanges, Inc., Twentieth Century - Fox Film Corporation, National Theatres Corporation and Fox West Coast Theatres Corporation submit proposed Jury Instructions Nos. 1 through 57 in the above entitled action.

Dated: July 2, 1956.

Respectfully submitted,

O'MELVENY & MYERS,

/s/ By HOMER I. MITCHELL,
NEWLIN, HOLLEY, TACKABURY
& JOHNSTON,

/s/ By FRANK R. JOHNSTON,
Attorneys for Defendants. [115]

Defendants' Instruction No. 1

It is the duty of the court to state to you the principles of law which apply in this case, and it is your duty as jurors to follow the law as given to you by the court in these instructions and to apply it to the evidence in reaching your verdict. Statements by counsel as to what the law may be should be disregarded by you, if contrary to the

law as stated by the court. The instructions given to the jury constitute one connected charge and should be so regarded by you; that is to say, you should apply these instructions to the facts as a whole and not detach or separate any one instruction from any of the others unless the court specifically instructs you to do so. You are not to single out any certain sentence or any individual point, but are to regard these instructions as a whole and consider each in the light of the others.

Defendants' Instruction No. 2

You, the jurors, are the sole triers of the facts. It is your recollection of the evidence that controls, not what counsel may say was the evidence on any issue, nor what the Court in its charge may assume the evidence to be. You, the jurors determine the ultimate facts from a consideration of the evidence. And you apply to those ultimate facts as you may find them the law as charged by the Court. The Court expresses no opinion on the issues of fact; and no questions or remarks of the Court during the trial should be so construed. Any references to the evidence by the Court during the charge to the jury will be only such as the Court thinks proper in order that you, the jurors, may know what are the issues of fact which you are to decide and to which you are to apply certain principles of law in arriving at your verdict. [117]

Defendants' Instruction No. 3

Your verdict in this case must not be based upon

any preconceived ideas and notions, but must be based solely upon the evidence in the case.

Any information which you have gained outside of the courtroom in regard to this case or in regard to any other facts concerning the motion picture industry, in newspaper articles or on the radio or from any other source, must have nothing whatsoever to do with your verdict. [118]

Defendants' Instruction No. 4

In civil actions the party who asserts the affirmative of an issue must carry the burden of proving it. When the evidence is contradictory, the decision must be made according to the preponderance of evidence, by which is meant such evidence as, when weighed with that opposed to it, has more convincing force, and from which it results that the greater probability of truth lies therein.

In this action, plaintiff has the burden of proving each essential element of its case by a preponderance of the evidence. Should you find that the plaintiff has failed to produce this preponderance of evidence, then you must find in favor of the defendants. [119]

Defendants' Instruction No. 5

You will make no findings in this case based on speculation or conjecture. Proof requires a higher quality and dignity than mere suspicion or conjecture. [120]

Defendants' Instruction No. 6

The evidence here has been of two kinds, that

of oral testimony of witnesses, and written evidence, such as letters, contract, charts and documents. Neither kind is entitled to greater weight with you than the other, but all evidence properly before you is entitled to such weight as you choose to give it. [121]

Defendants' Instruction No. 7

Evidence may be classified as direct or circumstantial. Direct evidence is that sort of evidence by which a fact is proved directly and without inference from other facts. Circumstantial evidence is that sort of evidence by which an inference of an unknown fact is drawn from the existence of known facts. In arriving at your verdict, you may consider all of the evidence, both direct and circumstantial.

Before a fact can be said to have been proved by circumstantial evidence alone, it is necessary that the circumstances shall reasonably give rise to an inference of such fact, and also that no other reasonable inference to the contrary can be drawn from the same circumstance. There is a presumption that private transactions have been fair and regular, and there is a presumption that a person is innocent of wrong. Accordingly, if two inferences may be reasonably drawn from the same facts, one pointing to violation of the law and the other to innocent conduct, then it is your duty to infer that of innocent conduct. [122]

Defendants' Instruction No. 8

Each defendant has the right to be represented

by attorneys of its selection. You are not to be influenced by, nor are you to draw any inference of concert of action and combination from the circumstances that certain groups of defendants have employed and are represented by the same attorneys.

Each defendant is entitled to individual consideration. [123]

Defendants' Instruction No. 9

The practice of licensing motion pictures for successive exhibitions or runs in a given area is economically necessary and is lawful. Since all theatres cannot simultaneously have the first run, each distributor must decide which theatre in which area or areas shall play its pictures first. The very nature of the motion picture business requires that preference be given to one theatre over another in the area or areas selected by the distributor. This is an exercise of business judgment which each distributor has to make every day. There are a limited number of motion pictures available for exhibition, and there are a limited number of prints of each motion picture. A distributor of motion pictures by the very act of distributing them gives preference to some exhibitors over others.

Defendants' Instruction No. 10

No theatre has the right, as a matter of law, to demand from a motion picture producer the right of prior runs. [125]

Defendants' Instruction No. 11

The plaintiff in this case, as an exhibitor of

motion pictures, did not have the right to compel any of the defendant motion picture distributors to grant it a preferred run, or preference in licensing product, or, in fact, to license it any motion pictures. There is nothing illegal in the mere fact that plaintiff could not get the pictures it wanted on the particular run that it wanted. [126]

Defendants' Instruction No. 12

Plaintiff has brought this action under the anti-trust laws of the United States, which permit any person injured in his business or property by reason of anything forbidden in the antitrust laws to sue for threefold the damages sustained by him, together with costs and attorneys' fees.

Plaintiff charges that defendants conspired to unreasonably restrain and to monopolize trade and commerce in motion picture films to the damage of the Paradise Theatre. Unless plaintiff has sustained the burden of proving such a conspiracy to restrain or monopolize, it has no right to recover anything from the defendants in this action. [127]

Defendants' Instruction No. 13

A conspiracy is an agreement, express or implied, between two or more persons to do an illegal act or to do a legal act in an illegal manner.

The conspiracy which would be material to this case would be an agreement among the defendants, or some of them, to deprive the Paradise Theatre of prior runs which it would have otherwise been licensed.

In order to show a conspiracy, a common design

is of the essence. A person, to become a party to a conspiracy, must combine with someone else to effect its object by means agreed upon. Where circumstantial evidence is relied upon to establish the conspiracy, it is not only necessary that the circumstances concur to show the existence of the conspiracy, but they must be inconsistent with any other rational conclusion. If the evidence can be reconciled with either innocence or culpability, the law requires that the inference of innocence be adopted. [128]

Defendants' Instruction No. 14

Separate independent action by each defendant is not illegal under the antitrust laws. Independent action of each distributor would not form the basis of a liability; there must be the element of a conspiracy. [129]

Defendants' Instruction No. 15

Each of the defendants has denied that there was any conspiracy among any of them concerning the licensing of motion pictures to the theatres in the Inglewood-Westchester area and contends that the decision of each of the distributor defendants with respect to the licensing of pictures to the Paradise Theatre was made by each distributor individually after an independent review of the economic aspects of the situation.

If you find that the decision of the distributor defendants during the period with respect to licensing of motion pictures to the Paradise Theatre was reached independently and in the exercise of

its own business judgment, then such licensing could not form the basis of a conspiracy. [130]

Defendants' Instruction No. 16

Proof of conspiracy requires more than mere suspicion or conjecture. There must be, by a preponderance of the evidence, either direct proof of conspiracy or circumstantial proof giving rise to an inference of conspiracy. [131]

Defendants' Instruction No. 17

Where the evidence from which plaintiff contends a conspiracy may be inferred is circumstantial, it is necessary, in order to find conspiracy, that no other reasonable inference can be drawn from the same circumstances. If two inferences can reasonably be drawn from the same evidence, one pointing to a conspiracy and the other to no conspiracy, it is your duty to infer that of no conspiracy. [132]

Defendants' Instruction No. 18

In considering whether the conduct of the defendants is evidence of a conspiracy, you are entitled to take into consideration the reasonableness of that conduct. If you find that the defendants acted on the basis of business factors which a reasonable person might take into consideration in determining their respective actions, such conduct standing along would not furnish any basis for an inference of conspiracy. Unless other evidence furnished some basis for inferring that the conduct of the defendants was in fact the result of a con-

spiracy, you would not be justified in determining that a conspiracy existed. [133]

Defendants' Instruction No. 19

If you find from the evidence that there was any similar or identical action on the part of any two or more defendants, but you conclude that what each did was the result of each having acted independently of any of the others, then you would not be justified in finding that such similar action resulted from any conspiracy of the defendants in violation of the antitrust laws.

Any similarity of the business practices of certain defendants does not necessarily lead to the conclusion that they were in a conspiracy. If you find that such similarity results from nothing more than common business solutions to identical problems in a competitive industry, the similarity of conduct would not support a conclusion that a conspiracy existed. [134]

Defendants' Instruction No. 20

As I have stated, similar or identical action in response to a common business problem does not require a conclusion that a conspiracy existed. That is true whether or not each of the defendants concerned knew what the others were doing. Businessmen frequently are aware of the action of their competitors and nevertheless they are entitled to adopt reasonable solutions to business problems even though in some cases they are aware that similar or even identical solutions to the same problems have been adopted by others. Conscious or uncon-

scious similarity or identity of conduct, when it is the result of independent action in respect to a common business problem, is not violative of the antitrust laws. [135]

Defendants' Instruction No. 21

In considering whether the conduct of the defendants is circumstantial evidence of a conspiracy, it is not the jury's function to substitute its judgment for that of the defendants. Each defendant had the right, acting without conspiracy, to license its pictures in such manner and to such theatres as it might see fit. There may be a number of different solutions to a given problem which might have been adopted in good faith and no one solution was necessarily correct or incorrect. [136]

Defendants' Instruction No. 22

As a result of the lawful and necessary practice of licensing motion pictures on successive runs, each distributor must determine the number of runs on a given availability which it will license in a particular area. In this case, each distributor had to determine the number of first runs which it would license in the entire Los Angeles area and the number of 7-day, 14-day and 21-day runs which it would license in the Inglewood-Westchester area. If these decisions were made without conspiracy with any other defendant, they are not subject to attack in this case under the antitrust laws. [137]

Defendants' Instruction No. 23

Also as a result of the lawful and necessary

practice of licensing motion pictures on successive runs, each distributor must determine the areas in which it licenses a given run. In this case, each distributor had to determine the areas in which it would license Los Angeles first runs and the areas in which it would license early subsequent runs. If these decisions were made without conspiracy with any other defendant, they are not subject to attack in this case under the antitrust laws. [138]

Defendants' Instruction No. 24

In determining whether the decisions of each distributor with respect to the number of runs it would license and the areas in which it would license them were pursuant to conspiracy with other defendants, you must take into consideration the reasonableness of these decisions in the light of the business considerations brought out in the evidence. Such factors as population, density, size and importance of communities and business centers, ease of travel between theatres, competition between theatres, and effect upon film rentals are appropriate for your consideration in this regard. If you find that the decisions of a particular distributor were reasonable solutions to problems of motion picture distribution, such decisions furnish no basis for any inference of conspiracy. [139]

Defendants' Instruction No. 25

All that the antitrust laws require with respect to runs is that they be licensed by each distributor in the exercise of its own business judgment with-

out combination or conspiracy with others. So long as it used its own business judgment, each distributor had the right to select its customers upon any basis which it desired. [140]

Defendants' Instruction No. 26

Subsidiaries of Twentieth Century-Fox owned and operated the Loyola, Academy, Fifth Avenue and Fox Inglewood from August of 1950 through September of 1951.

I instruct you that Twentieth Century-Fox in the exercise of its own business judgment, had the right to exhibit all of its motion pictures in the Loyola, Academy, Fifth Avenue and Fox Inglewood Theatres and any other theatres owned and operated by it in such manner and upon such terms and subject to such conditions as may have been satisfactory to it. I instruct you that there was no obligation on the part of Twentieth Century-Fox to offer its pictures to the Paradise Theatre and no inference of conspiracy may be drawn from the fact that it did not do so. [141]

Defendants' Instruction No. 27

Warner's licensed the Los Angeles area first run of its motion pictures to theatres owned by the Warner companies. They had a lawful right to do so to the exclusion of all other theatres in the Los Angeles area and no inference of conspiracy may be drawn from that practice. [142]

Defendants' Instruction No. 28

The evidence is undisputed that Paramount licensed the first run of its pictures to the Para-

mount Downtown Theatre and the Paramount Hollywood Theatre, operated by an independent exhibitor, Fanchon & Marco, Inc., because of certain franchise agreements. You are instructed that said franchise agreements were lawful and that no inference of conspiracy may be drawn from the fact that Paramount licensed its pictures to those theatres pursuant to those agreements. [143]

Defendants' Instruction No. 29

The evidence is undisputed that Loew's selected the Egyptian Theatre in Hollywood and the Loew's State Theatre in downtown Los Angeles for the first run exhibition of many of its pictures and that Universal selected the Vogue, United Artists, Ritz, Culver and Studio City Theatres for the first run exhibition of its pictures. Each of these distributors, acting independently, had the lawful right to make such a selection of its customers.

Defendants' Instruction No. 30

It was proper and lawful for a distributor to consider in selecting its customers the economic advantages offered by such customer, including Fox West Coast, over the lack of economic advantages offered by the plaintiff.

You are further instructed that so-called buying power which any defendant may have possessed, including Fox West Coast, is not illegal in itself.

Defendants' Instruction No. 31

The distributors are under no legal obligation to substitute an unknown customer for a proven one. [146]

Defendants' Instruction No. 32

Loew's, Paramount, Warner's, and Universal each offered the plaintiff the opportunity to license its pictures on a competitive basis with other theatres in the Inglewood-Westchester area. In this connection, you are instructed that competitive bidding is one of several lawful means of determining which of various theatres in a particular area shall be licensed pictures on a particular run or runs. No inference of conspiracy may be drawn if each of the various distributors independently adopted this method of licensing. [147]

Defendants' Instruction No. 33

To the extent that substantial competition is an issue in this case, I instruct you that the burden is upon the plaintiff to prove by a preponderance of the evidence that substantial competition did not exist between or among theatres. It is not the burden of the defendants, or any of them, to prove that substantial competition did exist between or among any theatres. [148]

Defendants' Instruction No. 34

It is essential to plaintiff's case with respect to subsequent runs that it prove the absence of substantial competition between it and the other theatres in the Inglewood-Westchester area. If plaintiff has failed to prove such absence of competition, you must find for the defendants on that phase of the case.

It does not follow, however, that the converse is true. Whether or not substantial competition ex-

isted between the Paradise Theatre and the other theatres in the Inglewood-Westchester area, each distributor, acting independently, was free to employ such method of distribution in that area as seemed best to it. [149]

Defendants' Instruction No. 35

Even if you were to determine that there was no substantial competition between the Paradise Theatre and other theatres in the Inglewood-Westchester area, but you are of the opinion that the distributors in good faith believed that those theatres were in competition and acted on the basis of independent judgment, then no inference of conspiracy should be drawn from the fact that the distributors treated those theatres as being in substantial competition. In other words, an error in judgment honestly made does not give rise to a charge of conspiracy.

If there are factors which could lead a reasonable man to believe there was substantial competition between these theatres, no inference of conspiracy could be drawn from the determination by the distributor that competition did exist, if such determination was made in good faith and on the basis of independent judgment, even though your own individual opinion might be that there was no substantial competition.

You are to ask yourselves whether such determination was made independently or whether it was the result of a conspiracy. [150]

Defendants' Instruction No. 36

The antitrust laws do not prohibit all restraints of trade, but only those which are unreasonable. The law recognizes that it is almost impossible to conduct a business of any kind without in some degree or another restraining trade. Perhaps an illustration will be helpful. Distributors of motion pictures might agree to prevent obscene or suggestive material from being shown on motion picture screens. Such a combination might well restrain trade in obscene or suggestive pictures. In point of fact the combination would be designed for that very purpose. Such a restraint would undoubtedly be considered a reasonable restraint of trade and hence lawful. [151]

Defendants' Instruction No. 37

If you find that the manner in which the defendant distributors distributed pictures in the Inglewood-Westchester area was reasonable, that would be the end of the case. You would not have to go any further. If you find it was unreasonable, then you have to determine whether or not it was the result of an illegal conspiracy or combination in restraint of trade. [152]

Defendants' Instruction No. 38

I instruct you that a violation of the antitrust laws does not give any right of action to any person or corporation unless he or it can establish that the business or property of that individual or corporation has been injured by reason of the violation of the antitrust laws. The plaintiff cor-

poration must not only establish the illegal conspiracy upon which its claim is based but that in fact it was injured by the conspiracy and that it suffered damages in some reasonably ascertainable and computable amount. [153]

Defendants' Instruction No. 39

I instruct you that it would be a violation of your duty as jurors to consider the question of injury or damages, if any, prior to determining the issue of liability or to allow the question of injury or damages, if any, to affect your judgment in any way in determining the issue of liability. The first question for you to decide is whether or not the plaintiff is entitled to recover in this action against the defendants. If you find from the evidence that plaintiff is not entitled to recover, then it is your duty to immediately return the verdict in favor of said defendants. [154]

Defendants' Instruction No. 40

In a private action, such as this, plaintiff must show that the acts claimed to have been done pursuant to a conspiracy proximately caused injury to plaintiff's business or property.

The doctrine of proximate cause requires plaintiff to prove that but for such a conspiracy and such acts, the injury complained of would not have occurred. If plaintiff corporation was injured by causes other than acts of the defendants, then such injury was not proximately caused by such acts of the defendants; in that case the loss, if any, which plaintiff corporation sustained is merely one

of the hazards and risks incident to the competitive system of business in this country.

If plaintiff corporation did not suffer any injury to his business or property, or if plaintiff corporation suffered injuries to his business or property, which were not proximately caused by the acts of the defendants pursuant to the conspiracy alleged in the complaint, it cannot recover. [155]

Defendants' Instruction No. 41

As part of its burden of proving that plaintiff corporation was injured in its business or property by reason of the acts complained of, plaintiff must show by the preponderance or greater weight of the evidence that an injury to its business or property occurred which, absent the alleged conspiracy, would not have occurred in the normal course of business. For example, if it suffered losses merely because plaintiff refused to enter into competition for pictures, or because of the excessive number of theatres in the Inglewood-Westchester area, or because of television competition, or because of a general decline in the patronage of motion picture theatres, such losses would not constitute an injury for which recovery can be had under the antitrust laws. [156]

Defendants' Instruction No. 42

In determining whether the acts of the defendants caused any injury to plaintiff's Paradise Theatre, you are entitled to take into consideration plaintiff's claim that it was not in substantial competition with other theatres in the Inglewood-

Westchester area. If in fact the Paradise Theatre was not in substantial competition with such theatres, it would not have lost any substantial or significant amount of patronage by reason of the fact that it sometimes played pictures later than other theatres in the area and you would be justified in concluding that the Paradise was not injured by any action of the defendants. [157]

Defendants' Instruction No. 43

You are instructed that plaintiff corporation was not entitled to be protected in any manner against the hazards of free and open competition. Under a system of free and open competition businessmen are permitted to market their product under conditions most favorable to them and on terms calculated to promote their own interests even at the expense of their competitors. All exhibitors in the Inglewood-Westchester area and elsewhere were entitled to compete vigorously and to the best of their ability with the Paradise Theatre even though such competition may have reduced plaintiff corporation's profits or eliminated them completely, so long as there was no conspiracy in violation of the antitrust laws.

Accordingly, if plaintiff corporation was injured solely by free and open competition, it has no cause of action under the antitrust laws. [158]

Defendants' Instruction No. 44

The mere fact that a given method of competition makes it difficult for competitors to do business is not of itself sufficient to brand that method

of competition as unreasonable or unlawful. So, if you find that any injury which plaintiff may have sustained resulted from natural competitive factors rather than an unreasonable restraint of trade on the part of the defendants or some of them, your verdict must be for the defendants. [159]

Defendants' Instruction No. 45

Plaintiff's right to recover is limited to actual damages, the amount of which can be determined with reasonable certainty from the evidence. Plaintiff is not entitled to damages which are merely speculative, remote or uncertain. I do not mean to say that plaintiff would be precluded from recovery because of the fact that damages may not be exactly computed. Damages are recoverable if you are satisfied from the evidence that they may be reasonably approximated upon the evidence in the case. The question of the amount that plaintiff would be entitled to, if you conclude plaintiff is entitled to a recovery, is entirely and solely your responsibility, but it must be based upon some evidence in the case as a foundation that furnishes at least a reasonable approximation of damages that plaintiff has sustained. [160]

Defendants' Instruction No. 46

The mere fact that the Paradise Theatre failed to make as much profit as some other theatre does not prove or disprove a conspiracy. In a competitive system it is natural that some people will be more successful than others.

Furthermore, even though you believe plaintiff

has been damaged by the acts of defendants, plaintiff is not entitled to recover anything unless it proves by a preponderance of the evidence that the defendants, or some of them, were engaged in the conspiracy which is charged in this case and that the damage resulted from that conspiracy. [161]

Defendants' Instruction No. 47

The law does not permit an injured person to stand idly by and allow damages to accumulate without doing that which a reasonable man would do under the circumstances to limit the amount of damages. A person injured by the wrongful act of another is bound to exercise reasonable care and diligence to avoid loss or minimize the resulting damages. Plaintiff cannot recover for losses which might have been prevented by reasonable efforts and expenditure on its part. If plaintiff could have minimized its losses, by entering into competitive bidding, it was under a duty to do so. [162]

Defendants' Instruction No. 48

The law under which this action was brought provides that any person who shall be injured in his business or property by reason of anything forbidden in the Federal anti-trust laws shall recover three times the damages sustained by him and costs of suit, including reasonable attorneys' fees.

If you should find that plaintiff in this case has suffered such injury in his business or property, your duty shall be to fix only the amount of actual damages, if any, which you shall have found to be proximately caused by acts of the defendants. It is

not your duty to triple the amounts of the actual damages, if any, or to fix the amount of the attorneys' fees, if any. These are matters required to be attended to by the Court. Therefore, in your deliberations, you shall give no consideration whatever to the tripling of damages or to the subject of attorneys' fees. [163]

Defendants' Instruction No. 49

The fact that the Court has instructed you with respect to damages is not to be taken by you as an indication that the Court believes or does not believe that plaintiff is entitled to recover damages. Such instructions are given to you solely to guide you in arriving at the amount of your verdict only in the event you find from the preponderance of the evidence and instructions of the Court that plaintiff is entitled to recover. If from the evidence and the instructions you find that plaintiff is not entitled to recover, then, of course, you are to disregard entirely the instruction which the Court has given you concerning damages. [164]

Defendants' Instruction No. 50

You are the sole judges of the credibility of the various witnesses who have appeared before you.

If you conclude that any witness has testified falsely in regard to any material fact, you are at liberty to disregard the entire testimony of that witness. [165]

Defendants' Instruction No. 51

You are the sole judges of the weight to be at-

tached to the testimony of any witness, including expert witnesses.

In weighing the testimony of a witness you may consider any financial interest he has in the outcome of the case. If you believe that such financial interest has colored his testimony, then to that extent you may disregard his testimony.

In weighing the credibility of a witness you may consider whether he displayed any bias or prejudice when testifying. [166]

Defendants' Instruction No. 52

No adverse inference is to be made against plaintiff or any party defendant because such party has not produced as a witness in this case a person who was its employee and who is not now employed by that party or who is now deceased or who is unable to appear as a witness because of reason of illness. [167]

Defendants' Instruction No. 53

The Court instructs you that evidence of acts and declarations of a deceased representative of any of the defendants against that defendant's interest, made within the scope of authority of such representative in the presence and observation of a witness is admissible. Such alleged acts and declarations of deceased representatives and the unsupported testimony of persons who would benefit financially by plaintiff's recovery in this lawsuit as to conversations between themselves and such deceased representative, however, though admissible, are to be viewed with caution. [168]

Defendants' Instruction No. 54

Any evidence that has been received of an act, omission or declaration of a party which is unfavorable to the interests of that party should be considered and weighed by you like any other admitted evidence but evidence of the oral admission of a party ought to be viewed by you with caution. [169]

Defendants' Instruction No. 55

You will recall that statements by one defendant, or its representative, were admitted in evidence only on a conditional basis as to other defendants. This was true also as to acts of, or correspondence with, a particular defendant. The acts and statements were received in evidence as against the particular defendant doing the act or making the statement.

The existence of a conspiracy cannot be established as to any defendant by the acts or statements of its alleged co-conspirators in its absence. The existence of the conspiracy and each defendant's connection with it must be established by independent proof based upon the reasonable inferences to be drawn from such defendant's own acts, own statements, and own conduct. [170]

Defendants' Instruction No. 56

The mere fact that plaintiff has named a number of parties as defendants in this action does not mean or require you to assume that all or any of them are liable to plaintiff. Plaintiff is required to present evidence which shows wrongdoing on the part of each defendant against whom it seeks dam-

ages. Plaintiff's claim against each defendant must be judged separately as to each such defendant, and the position of each defendant must be judged on its own merit. This is especially true wherever the facts relating to one defendant differ from the facts relating to some or all of the remaining defendants. Each defendant is entitled to the jury's individual consideration of the evidence as applied to it and to individual consideration as to whether or not that particular defendant participated in a conspiracy, if any, involving other defendants.

No defendant is to be prejudiced in your mind merely because it has been named as a defendant along with others in this case. It follows from what has just been said that you might from the evidence find a verdict in favor of one or more defendants, even though you might also find against two or more of the other defendants. [171]

Defendants' Instruction No. 57

Your verdict must be unanimous. You are expected to reach a verdict if you can conscientiously do so.

Each juror is entitled to his or her own opinion, but you are required to exchange views with your fellow jurors. That, obviously, is the very purpose of jury deliberation, to discuss and consider the evidence and listen to the arguments and reasons of your fellow jurors, to present your own individual points of view, and to reach an agreement, if you can, solely and only on the evidence, and if you can do so without violence to your own individual judgment.

You will not be living up to your oath of office if you vote for a verdict one way or the other, unless you are convinced that it is right, in accordance with the evidence in the case and the law. In other words, you are not to yield, for example, simply because you are outnumbered or outweighed. You vote with the others only if you are convinced on the evidence and the law that that is the correct way to decide the case. On the other hand, you should not hesitate, if convinced, to change a point of view if it appears to be erroneous to you. [172]

[Endorsed]: Filed July 5, 1956.

[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS

Pursuant to the Court's directions, plaintiff submits herewith the following Jury Instructions which it is presently contemplated it will request the Court to give at the above entitled action. It is anticipated that additional instructions turning upon the viewpoint of laws relied upon by the Court or relating to matters which may develop at or before the trial, will be submitted at appropriate times. [208]

Plaintiff's Jury Instruction No. 1

"Under our system of jurisprudence, the court and the jury have separate and distinct functions to perform, each independent of the other, to a large degree. It is the duty of the court to pass

upon all questions of law, the admission of evidence, and the conduct of the trial generally, and finally, when the evidence is all in and the jury have heard arguments of counsel, to charge the jury as to the law controlling and governing their consideration of the case.

“It is the duty of the jury to determine the facts based upon the evidence which has come to the jury from the witness stand, and from no other source. When the jury has finally determined all the facts and heard the charge of the court as to the law, they should then apply the law to the facts and render their verdict accordingly. In determining the facts, the jury is supreme. There is no authority above and beyond the jury which can determine the facts in any case, and this court and any other court that may hereafter be called upon to decide this case is bound by your findings of the facts.

“Just as the finding of the facts of the case by the jury is binding upon the court, so is the law as given to the jury in this charge, binding upon you. Even though the jury, or some member of the jury, or some counsel in the case might not agree that the law is or should be as the court has interpreted it and given it to you in this charge, nevertheless you are bound by the court’s construction of the law, and that law is given to you as it has been written by the lawmakers of the nation and interpreted by the courts, as this court [209] understands it to be, and it is therefore binding upon you throughout the case, and must be your guide

in its application to the facts as you determine them to be in arriving at your verdict.

“Under your oath you have agreed to try this case in accordance with the law and the evidence, and a true verdict render according to the law and the evidence. You should not be actuated by motives of sympathy or by prejudice. You should not be concerned, and I am sure you will not be concerned, with who are the plaintiffs or who or what are the defendants. You came into the jury box without any preconceived views, ideas or opinions concerning the right or wrong of either of the parties, and what you now know about it should have been learned from this witness stand, and your final determination of the facts based upon that evidence.

“You are here to do as nearly exact justice as you can. You can do justice neither to the court nor to the jury if you have the thought of punishment in your minds. We lose track of the real issues and the real facts of any case. So that we must approach it as we should approach the ordinary affairs in our lives, and in determining these facts, you should take into consideration your common experiences in the affairs of life. That is one of the strong elements of our jury system, that when twelve men and women who are drawn from the ordinary walks of life, who represent the cross sections of life, are brought together in the jury box, and under an oath to try the case upon the law and the evidence, they may bring into play the experiences that they have gained through life

as they have viewed their own affairs and the affairs of others as they have lived their lives. That is the [210] strength of the jury system. That is why we are here. And, of course, you should look at it impartially and decide it upon the facts." [211]

Plaintiff's Jury Instruction No. 2

"You, the jurors, are the sole triers of the facts. It is your recollection of the evidence that controls, not what counsel may say was the evidence on any issue, nor what the court in its charge may assume the evidence to be. You, the jurors, determine the ultimate facts from a consideration of the evidence. And you apply to those ultimate facts as you may find them the law as charged by the court. The court expresses no opinion on the issues of fact; and no questions or remarks of the court during the trial should be so construed. Any references to the evidence by the court during the charge to the jury will be only such as the court thinks proper in order that you, the jurors, may know what are the issues of fact which you are to decide and to which you are to apply certain principles of law in arriving at your verdict." [212]

Plaintiff's Jury Instruction No. 3

This case was filed on September 18, 1951, by Paradise Theatre Building Corporation. I charge you that the Paradise Theatre Building Corporation had a right under the law to bring this action at the time it was filed. The right to bring an action at the time it was brought is purely a question of law which has been passed upon and deter-

mined by this Court, and it is not a matter for further consideration by this Court or by this jury in the determination of the facts and the application of the law upon which its verdict is to be based; so in the consideration of your verdict, you will not consider any questions with respect to the time of the bringing of this suit. It is properly and legally within this court, and your problem and my problem here is solely one of determination in accordance with the law and the evidence. [213]

Plaintiff's Jury Instruction No. 4

The plaintiff in this proceeding is Paradise Theatre Building Corporation, a California corporation.

The defendants are Fox West Coast Theatres Corporation, Twentieth Century Fox Film Corporation, National Theatres Corporation, Paramount Pictures, Inc., Paramount Film Distributing Corporation, Loew's, Inc., Universal Film Exchanges, Inc., Warner Bros. Pictures, Inc. and Warner Bros. Pictures Distributing Corporation. [214]

Plaintiff's Jury Instruction No. 5

"All of the named defendants are corporations, and in that connection I instruct you that a corporation, although an artificial being existing only in contemplation of law, is held to the same measure of liability as an individual and is entitled to the same rights or protection. A corporation acts through its officers, directors, and agents, and may through one or more of them conspire with another corporation or with other individuals. Any act of an officer, director or of an agent of a corporation,

which is done within the scope and line of his duties or authority is at law considered as the act of the corporation itself." [215]

Plaintiff's Jury Instruction No. 6

This action is based upon what is commonly known as the "Sherman Anti-Trust Act", Section 1 of which provides, among other things, that:

"Every contract combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal * * *"

Section 2 of the Sherman Anti-Trust Act provides that:

"Every person who shall monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several states * * * shall be deemed guilty of a misdemeanor * * *"

Section 5 of the Clayton Anti-Trust Act provides that any person who should be injured in his business or property by reason of anything forbidden in the anti-trust laws of the United States, may sue, therefore, in any federal court and shall recover the damages by him sustained.

In this connection, the Court instructs you as a matter of law that the course and conduct of business which involves a regular exchange and distribution of feature motion pictures and the course and conduct of business which involves the exhibition of feature motion pictures requires the movement of films and other equipment across state

lines and constitutes inter-state commerce, so that distributors and exhibitors of feature motion pictures are subject to, and within the purview of, the federal anti-trust laws. [216]

Plaintiff's Jury Instruction No. 7

"What is a conspiracy?"

"A conspiracy is an agreement, express or implied, between two or more persons to do an illegal act or to do a legal act in an illegal manner." [217]

Plaintiff's Jury Instruction No. 8

"How may a conspiracy be proved?"

"One way is by direct evidence of a party to the conspiracy or by his admissions and statements. You have heard the testimony on this subject and you will evaluate its worth.

"No formal agreement is necessary to constitute a conspiracy or a combination. Monopoly, combination or conspiracy in violation of the law or statute may be inferred from a course of dealing as well as through direct exchange of words. An unlawful conspiracy may be, and often is, formed without simultaneous action or agreement on the part of the conspirators. Acceptance without prior agreement of an invitation to participate in a plan, the necessary consequence of which, if carried out, restrains interstate commerce, is sufficient to establish an unlawful conspiracy under the antitrust laws. It is not necessary to a conspiracy that all of the conspirators be a part of the conspiracy from the beginning. A person may join a conspiracy after it has been agreed upon.

“Conspiracy is seldom capable of proof by direct testimony or evidence, but frequently must be inferred from things actually done, taking into consideration all of the facts and circumstances surrounding the conduct of the parties who are charged with the conspiracy. Proof of conspiracy, however, requires more than mere suspicion or conjecture. There must be either direct proof of conspiracy or circumstantial evidence sufficiently strong to give rise to an inference of conspiracy.

“Another way to prove a conspiracy is by proof [218] of facts from which a conspiracy can logically be inferred.” [219]

Plaintiff's Jury Instruction No. 9

“If you find that the defendants entered into a course of business which violated the antitrust laws and you further find that such course of business continued over a substantial period of time, then plaintiff is entitled to the presumption that such illegal course of business continued on and the defendants must come forward with evidence to establish their withdrawal from that illegal course of conduct.

“Defendants have the burden of establishing affirmative action to withdraw from the conspiracy by taking action antagonistic to the unlawful course of conduct into which they had entered, if you have found that to be a fact. Until the defendants do some act to disavow or defeat any unlawful purpose to monopolize or to restrain, they are, under the law, deemed to remain participants as conspirators.” [220]

Plaintiff's Jury Instruction No. 10

"You are instructed that under the law the owner of a theatre, such as the Paradise Theatre, was entitled, as of right, to enter the market and compete in the exhibition of motion pictures, free of any unlawful combination and conspiracy to restrain or monopolize the distribution or exhibition of motion pictures in violation of the antitrust laws." [221]

Plaintiff's Jury Instruction No. 11

"If you find from a preponderance of the evidence that the defendants, or any of them, conspired and combined with each other to limit the showing of desirable run motion pictures to certain theatres and that this prevented the plaintiff from obtaining an availability of first run Los Angeles or seven or fourteen days after Los Angeles pictures, then the defendant or defendants with respect to whom you so find will have violated the antitrust laws of the United States." [222]

Plaintiff's Jury Instruction No. 12

"If you find and believe from the evidence that the defendants had knowledge that substantially uniform systems of runs and clearances were being set up and maintained for the benefit of theatres owned by Fox West Coast Theatres Corporation and others, to aid and assist any of these corporations in restraining and preventing competition from independent exhibitors to license feature pictures on the same, or substantially the same, run and clearance as were afforded these companies,

then you are instructed that any contracts or agreements of any distributor defendant providing for runs and clearances in conformity with such substantially uniform system, were illegal and a violation of the antitrust laws and in and of themselves constituted a conspiracy and an illegal business practice.” [223]

Plaintiff’s Jury Instruction No. 13

“You are further charged that the prohibition of antitrust laws is against any course of conduct which monopolizes and unreasonably restrains any part of interstate trade, and it makes no difference and it is no defense that such unreasonable restraint of trade or monopoly operates only in a single city or in a particular part of a city, and affects only a part of the industry involved.

“Therefore, if you find that an unreasonable restraint of interstate trade or commerce did in fact exist, it would make no difference that such restraint or monopoly affected only Los Angeles or the Westchester District.” [224]

Plaintiff’s Jury Instruction No. 14

“If you find that Fox West Coast Theatres Corporation participated in an illegal agreement, conspiracy or combination to violate the antitrust laws as those terms have been defined, and if you find that the defendant National Theatres Corporation, acting through their representatives on the Board of Directors of Fox West Coast Theatres Corporation, participated in its affairs and had a voice in determining its policy, then National Theatres

Corporation would be liable for whatever Fox West Coast Theatres Corporation did in violation of the antitrust laws.

“If you find that National Theatres Corporation participated in an illegal agreement, conspiracy or combination to violate the antitrust laws as those terms have been defined to you, and if you find that Twentieth Century-Fox Film Corporation, acting through its representatives on the Board of Directors of National Theatres Corporation, participated in its affairs and had a voice in determining its policy, then Twentieth Century - Fox Film Corporation would be liable for whatever National Theatres Corporation did in violation of the antitrust laws.

“If you find that Warner Bros. Pictures Distributing Corporation participated in an illegal agreement, conspiracy or combination to violate the antitrust laws as those terms have been defined to you, and if you find that Warner Bros. Pictures Inc., acting through its representatives on the Board of Directors of Warner Bros. Pictures Distributing Corporation participated in its affairs and had a voice in determining its [225] policy, then Warner Bros. Pictures, Inc. would be liable for whatever Warner Bros. Pictures Distributing Corporation did in violation of the antitrust laws.”

Plaintiff's Jury Instruction No. 15

“If you find that there was a conspiracy on the part of the defendants, or some of them, to restrain trade, the fact that motion pictures are li-

censed under a copyright would not exempt such defendants from the antitrust laws of the United States.” [227]

Plaintiff’s Jury Instruction No. 16

“If you find that the defendants engaged in a combination and conspiracy in violation of the antitrust laws with respect to and which had an effect on the playing position of the Paradise Theatre, then you are instructed that the fact that the Loyola Theatre was built and in operation before the Paradise Theatre is no defense.” [228]

Plaintiff’s Jury Instruction No. 17

“You are charged that an act which is harmless when done by one person or corporation becomes a public wrong when it is done by many persons or corporations acting in concern as part of a plan to violate the antitrust laws or as part of the sum of acts which are relied upon to effectuate such violation. It then takes on the form of a conspiracy and is prohibited if the result is hurtful to the public or to the individual against whom the concerted action is directed.” [229]

Plaintiff’s Jury Instruction No. 18

“If you find that the defendants were acting together in a conspiracy to restrain or monopolize the first run or early availabilities of motion pictures in Los Angeles or the Westchester area, then such a conspiracy may not be justified or explained by testimony of normal processes of competition, by comparison of theatres or by comparison of efficiency in business.” [230]

Plaintiff's Jury Instruction No. 19

"You are charged that the plaintiff in this case has the burden of producing evidence which you believe and which satisfies your minds by a preponderance of the evidence that the defendants in this case, or some of them, were engaged in a combination or conspiracy in violation of Section 1 or 2 of the Sherman Act which resulted in injury to the business or property of the plaintiff.

"In this respect you are charged that plaintiff does not have to persuade you beyond a reasonable doubt, but only by a preponderance of the evidence. By a preponderance of the evidence, it is not meant that more witnesses are required. The credibility as to witnesses is for the jury to decide. If you are satisfied as to any issue upon which the plaintiff has the burden that he has produced evidence which you believe, whether documentary or oral, and, which satisfies your minds by a preponderance of the evidence, then you must find for plaintiff with respect to that issue." [231]

[Endorsed]: Filed July 5, 1956.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: July 9, 1956. At: Los Angeles, Calif.

Present: Hon. Harry C. Westover, District Judge. Deputy Clerk: Mary O. Smith. Reporter: S. J. Trainor. Counsel for Plaintiff Elwood S. Kendrick and Jack Corinblit. Counsel for Defendants: Frank R. Johnston and David Massey for defendants Fox West Coast, et al.; Homer I. Mitchell and Philip F. Westbrook, Jr., for defendants Warner Bros., et al.

Proceedings: For jury trial.

Court orders that no reference be made to the Paramount case or national conspiracy in the opening statements.

It is ordered that cause is continued to July 10, 1956, 10 a.m., for jury trial.

Statements are made by counsel.

Attorney Mitchell moves to dismiss as to defendant United Artists Corp., and it is so ordered.

Attorney Mitchell moves to have cost of original transcript divided and that same be taxed as cost at completion of trial, together with copies.

Court orders that cost of original transcript and copies be taxed as costs.

JOHN L. CHILDRESS,
Clerk. [264]

[Title of District Court and Cause.]

PLAINTIFF'S OFFER OF PROOF AND MEMORANDUM OF LAW WITH REFERENCE TO THE ADMISSIBILITY OF EVIDENCE SHOWING DEFENDANTS' ATTEMPT AND PURPOSE TO MONOPOLIZE IN THE WESTCHESTER - INGLEWOOD AREA

I.

This memorandum is directed primarily to plaintiff's offer to prove the agreements (and facts relating thereto) pursuant to which the Fox defendants restricted theatre construction in the Westchester-Inglewood area. Specifically, plaintiff offers to prove:

That in 1945, Fox West Coast acquired property for a theatre in Westchester and at the same time exacted from the seller a written commitment that the seller would not sell any land which it owned for use as a theatre for a period of five years or until 7000 units were constructed in the Westchester area. [279]

This seller at that time controlled substantially all of the undeveloped property in Westchester and the written agreement exacted by Fox West Coast in effect excluded the possibility of any outside theatre owner from constructing a theatre in Westchester. The written agreement shows that there was no relationship whatsoever between the demands made by Fox and the reasonable needs of a land developer, since Fox was:

(a) Not committed to build a theatre;

(b) If it did build a theatre, it had, substantially complete power as to the size and type of theatre and could, if it desired, construct a theatre anywhere from 300 to 2000 seats, a theatre which would charge 10c or \$1.00, a theatre which would play on first run or last run. The agreement which Fox exacted precluded the seller from selling property for use as a theatre under the conditions therein stated.

The document upon which plaintiff relies is marked as plaintiff's Exhibit 33b for identification.

Proof will further show that despite the fact that the agreement exacted by Fox had the escape clause, namely, a provision that if 7000 units were constructed, the restriction would no longer apply, that with the knowledge of Fox the seller failed to include this escape clause in the deeds of virtually every third party buyer of land.

Specifically, in the deed to the plaintiff in this case, plaintiff's offers to prove that such deed had a provision only that no theatre could be built until January 1, 1950, and did not contain any escape clause.

Plaintiff offers to prove that plaintiff's deed provided that if it violated its restriction which precluded it from building a theatre until January 1, 1950, that it would automatically lose its interest in that property and the property would [280] revert to the seller. The document upon which plaintiff relies in this connection is the deed marked as Exhibit 33a for identification.

The evidence will show that in 1948 Fox West Coast and the seller of Westchester property agreed in writing that 7000 units had been constructed in the Westchester district and that thereafter the theatre building restriction on sales by the seller were not required. But this evidence will further show that this release of the restriction was, to all effects and purposes, meaningless, because

(1) Property had been sold which had contained the theatre building restriction without the escape clause and therefore the theatre building restriction was in no way affected by the release in future given by Fox;

(2) By its terms, the 1948 release only affected sales made in the future and plaintiff's property as well as most other property had been sold before the release was executed. The restriction on Paradise property was as much in effect after 1948 as it had been before then. [280]

* * * * *

[Endorsed]: Filed July 23, 1956.

[Title of District Court and Cause.]

PLAINTIFF'S MEMORANDUM RE OFFER
AND TREATMENT OF U. S. VS. PARA-
MOUNT

I.

First Offer

Plaintiff hereby offers in evidence the following exhibits which have been marked for identification

in this case: 44A through 44K-3 and 44L through 44Q-4. These exhibits include the Findings of Fact and Conclusions of Law and the decrees in the Paramount Case, together with certain exhibits in that case.

Plaintiff makes this offer and stipulates that none of these exhibits shall be shown to the jury or referred to by plaintiff in closing argument. This offer is made provided that the [308] Court explain at or prior to the close of the Plaintiff's case, the evidentiary impact of the Paramount decrees, Findings of Fact and Conclusions of Law upon the Paradise Case, which statement shall include the following:

1. That the United States Government filed an action against certain defendants, including the defendants Twentieth Century Fox Film Corporation, National Theatres Corporation, Loew's, Inc., Warner Bros. Pictures, Inc., Warner Bros. Picture Distributing Corporation, Paramount Pictures, Inc., Paramount Film Distributing Corporation, Universal Film Exchanges, Inc., RKO Radio, Inc., Columbia Pictures Corporation and United Artists Corporation. That action was entitled United States vs. Paramount, et al.

2. That it was adjudicated in that case that the defendants Twentieth Century Fox, National Theatres Corporation, Loew's Inc., Warner Bros. Pictures, Inc., Warner Bros. Picture Distributing Corporation, Paramount Pictures, Inc., Paramount Film Distributing Corporation and Universal Film Exchanges, Inc., RKO Radio Pictures, Inc., Co-

lumbia Pictures Corporation and United Artists Corporation had violated the anti-trust laws of the United States by entering into a national conspiracy; and

3. That among other things this conspiracy was found to have violated the anti-trust law by:

(a) Employing their collective monopoly power to exclude competitors from the first run market and that they had the intent to exercise this power and that they did so in violation of section 2 of the Sherman Act. (See Conclusion of Law, No. 13, U. S. vs. Paramount.)

(b) That these defendants used this power to actually exclude independents from the first run market and to restrict the distribution of pictures to independents in violation of sections 1 and 2 of the Sherman Act. (See Conclusion of Law, No. 14.)

4. That in U. S. vs. Paramount final decrees were entered against defendants Twentieth Century Fox Film Corporation, Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation, Loew's, Inc., Paramount Pictures, Inc., Paramount Film Distributing Corporation, Universal Film Exchanges, Inc., Columbia Pictures Corporation and United Artists Corporation, which enjoined them:

(a) "From granting any clearance between theatres not in substantial competition"; and

(b) "From licensing any feature for exhibition upon any run in any theatre in any other manner than that each license shall be offered and taken theatre by theatre solely upon the merits and without discrimination in favor of affiliated theatres,

circuit theatres or others.” (See: Warner’s decree, Exhibit 44-E, pages 2 and 4; Loew’s decree, Exhibit 44-D, pages 3 and 4; Twentieth Century Fox decree, Exhibit 44-F, pages 3 to 5; Paramount decree, Exhibit 44-G, pages 3 and 5; and the decree against Universal Film Exchanges, Inc., United Artists Corporation and Columbia Pictures Corporation, Exhibit 44-C, pages 3 and 4.)

5. The complaint U. S. vs. Paramount was filed in 1938 and the action was finally concluded in 1950.

B. Alternative Offer

If the Court declines to receive the offer set forth in A above and to make the statement indicated, plaintiff offers in evidence the decrees, Findings of Fact and Conclusions of Law, including Exhibits 44A through 44K-3 and Exhibits 44L through 44Q-4. It is stipulated that none of these exhibits shall go to the jury or be referred to by counsel except that the following portions of certain of these exhibits may be read to the jury and these portions [310] only shall be typed, marked as exhibits and used as evidence:

1. From Exhibit 44A, the Findings of Fact and Conclusions of Law in U. S. vs. Paramount:

The defendants Loew’s, Inc., Warner Bros. Pictures Distributing Corporation, Twentieth Century Fox Film Corporation, National Theatres Corporation, Columbia Pictures Corporation, Universal Film Exchanges, Inc. and United Artists Corporation, together with Paramount and RKO had the

collective monopoly power to exclude competitors from first run and this monopoly power was coupled with their intent to exercise this power in violation of section 2 of the Sherman Act.

These same corporations and RKO and Paramount used this power to actually exclude independents from the first run market and to restrict the distribution of pictures to independents in violation of sections 1 and 2 of the Sherman Act.

The defendants Loew's, Paramount, Warners, Universal and Twentieth Century Fox were enjoined from granting any clearance between theatres not in substantial competition and from licensing any feature for exhibition upon any run in any theatre in any other manner than that each license shall be offered and taken theatre by theatre solely upon the merits and without discrimination in favor of affiliated theatres, circuit theatres or others. (The foregoing injunctive provisions are contained as to Loew's in plaintiff's Exhibit 44D, pages 3 and 4; as to Warners in plaintiff's Exhibit 44E, pages 2 and 4; as to Twentieth Century Fox, in plaintiff's Exhibit 44F, pages 3 through 5; as to Paramount, in plaintiff's Exhibit 44G, pages 3 through 5; as to Universal, plaintiff's Exhibit 44B, pages 3 and 5.

Of course, under the Emich Case the Court should explain the relationship of U. S. vs. Paramount to the case at bar. [311]

* * * * *

[Endorsed]: Filed August 3, 1956.

[Title of District Court and Cause.]

SUPPLEMENTAL INSTRUCTIONS PROPOSED BY PLAINTIFF

Plaintiff's Proposed Jury Instruction No. 5A

A plaintiff is not required to name all alleged co-conspirators as defendants, and the fact that some are not named defendants does not make the named defendants less liable if you find they participated in the conspiracy charged. [349]

Plaintiff's Proposed Jury Instruction No. 6A

A restraint of trade means a restraint of competition. Restraint of interstate trade or commerce is unlawful if it is the result of a monopoly or is created by a contract, combination or conspiracy. It is not necessary for a restraint to be illegal that it should suppress all competition; a partial restraint of competition is sufficient. A restraint affecting the exhibition of motion pictures in Los Angeles or Westchester or affecting first run exhibition in Los Angeles or Westchester would be sufficient under the statute.

Trade may be restrained if it is hindered, obstructed, injured or destroyed in any way. An essential characteristic of a monopoly is a wrongful exclusion of competitors from the field. Monopoly is actually the concentration of business in the hands of a few to such an extent that competition is in some way unlawfully restrained. [350]

Plaintiff's Proposed Jury Instruction No. 6B

The term "monopolize" in the antitrust laws

means to acquire through means, which are not specifically approved, a dominant position in the market so as to exclude actual or potential competition, and to follow such a course of conduct with the intent of monopolizing. It means to take steps toward acquiring a dominant position in the market and to take such steps when not encouraged by the law. Such monopolization occurs where a corporation or group of corporations seek to secure a dominant share of the market through restraints of trade which are prohibited, or through predatory practices, or through the bad faith use of otherwise legitimate means.

Section 2 of the Sherman Act prohibits both monopolization, and attempts to monopolize, and any combination or conspiracy to monopolize any part of the trade or commerce among the several states.

You are instructed that the term "any part" is applicable to the City of Los Angeles or to the area of Los Angeles known as the Westchester area, or to the first run market in the city of Los Angeles or to the first run market in the Hollywood Boulevard area. [351]

Plaintiff's Proposed Jury Instruction No. 6C

It is not always necessary to find a specific intent to restrain trade or to build a monopoly in order to find that the antitrust laws have been violated. It is sufficient that a restraint of trade or monopoly results as the consequence of a defendant's conduct or business arrangements. No monopolist monopolizes unconscious of what he is doing.

If an arrangement or combination actually results in a monopoly the intent to monopolize is imputed from the result accomplished. Specific intent is necessary only where the acts fall short of accomplishing the results condemned by the statute.

It is unlawful to foreclose competitors from any substantial market.

The use of monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage, or to destroy a competitor is unlawful. [352]

Plaintiff's Proposed Jury Instruction No. 8A

If you find that there was a conspiracy between two or more of the defendants named in this case and/or between them and other corporations whom you find to have participated in such conspiracy, then you are instructed that the acts, statements or conduct of each conspirator are chargeable to all of the conspirators. In law conspirators are deemed to be the agents of each other in carrying out the purposes of the conspiracy. [353]

Plaintiff's Proposed Jury Instruction No. 10A

A first run motion picture is an article of trade or commerce and if you find that the defendants in this case controlled that product and if you find that this control was accomplished by an attempt to monopolize, and if you further find that as a result a smaller competitor, such as plaintiff, was eliminated from competition or was prevented from competing effectively, then you are instructed that such action on the part of the defendants who par-

ticipated therein was an unreasonable restraint of trade within the meaning of the antitrust laws.

Plaintiff's Proposed Jury Instruction No. 10B

You are charged that it would be unlawful and a violation of the antitrust laws for any group of corporations to maintain a monopoly of the first run exhibition of motion pictures in the City of Los Angeles as a result of a conspiracy in violation of the antitrust laws by refusing to license pictures first run to any theatre other than those operated, managed or booked by other participants in the monopoly, or by restricting the pictures which they would so license to outsiders to the pictures which the other participants found to be undesirable. [355]

Plaintiff's Proposed Jury Instruction No. 11A

If you find that the defendant distributors each had its first run customer in Los Angeles and made no effort to license pictures on a first run to any other theatre in Los Angeles, and if you find that the operators of the defendants' theatres in Los Angeles each had a fixed source of supply of first run pictures from certain of the defendant distributors and did not seek to license the pictures of any other distributor on a first run, then from such circumstances you may infer that this arrangement was the result of an unlawful conspiracy to monopolize the exhibition of first run pictures and restraint of trade and commerce in the exhibition of first run pictures in Los Angeles to the exclusion of the plaintiff from the exhibition of first run pictures. [356]

Plaintiff's Proposed Jury Instruction No. 12A

You are instructed that it is unlawful and an unreasonable restraint of trade under the Sherman Act for a distributor of motion pictures to grant any clearance between two theatres which are not in substantial competition with each other.

The word "clearance" means

"The period of time usually stipulated in license contracts, which must elapse between runs of the same picture within a particular area or in specified theatres."

The term "run" means

"The successive exhibitions of a motion picture in a given area, first run being the first exhibition in that area, second run being the next subsequent, etc."

U. S. vs. Paramount Pictures, Inc., et al., 334 U. S. 131, 145; 92 L. Ed. 1260, 1286.

If you find that the defendants granted clearance to the Academy, United Artists, Fox - Inglewood, Fifth Avenue, Southside, La Tigera or Imperial Theatres over the Paradise Theatre, then with respect to the theatre receiving it, such clearance would be unlawful if that theatre was not in substantial competition with the Paradise Theatre.

Plaintiff's Proposed Jury Instruction No. 12B

The adoption of uniform business practice by members of a trade, may or may not be evidence of a conspiracy. If such uniform practices are the result of a specific or tacit agreement and if these practices are such as to unreasonably restrain trade, they will be condemned by the antitrust laws. [358]

Plaintiff's Proposed Jury Instruction No. 13A

If you find that the defendants or any of them conspired to deprive the Paradise Theatre of pictures for exhibition on an availability of 7 days after Los Angeles first run closing, by refusing to negotiate with the Paradise Theatre for such availability, then such conspiracy may unreasonably restrain trade in violation of the antitrust laws even though the Paradise Theatre and other theatres in the Inglewood-Westchester area were in substantial competition. [359]

Plaintiff's Proposed Jury Instruction No. 19A

You are instructed that evidence is to be evaluated not only by its own intrinsic weight but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and, therefore, if weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory evidence was within the power of the party, the evidence offered should be viewed with distrust. [360]

Plaintiff's Proposed Jury Instruction No. 19B

Evidence may be either direct or indirect. Indirect evidence is known also as circumstantial evidence.

Both direct evidence and circumstantial evidence are recognized and admitted in courts of justice and upon either or both, juries lawfully may base their findings.

The law makes no distinction between the two classes as to the degree of proof required, but re-

spects each for such convincing force as it may carry and accepts each as a reasonable method of proof.

Thus in this case, each of the elements of plaintiff's case may be proved by indirect evidence if that evidence carries the convincing force needed to constitute a preponderance of the evidence. [361]

Respectfully submitted,

ELWOOD S. KENDRICK,
JOSEPH L. ALIOTO,
JACK CORINBLIT,
DAN HERSCHER,

/s/ By JACK CORINBLIT,

Attorneys for Plaintiff. [362]

[Endorsed]: Filed Aug. 13, 1956.

[Title of District Court and Cause.]

DEFENDANTS' PROPOSED JURY INSTRUCTIONS (ADDITIONAL AND REVISED)

Defendants Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation, Paramount Pictures Inc., Paramount Film Distributing Corporation, Loew's Incorporated, Universal Pictures Company, Inc., Universal Film Exchanges, Inc., Twentieth Century-Fox Film Corporation, National Theatres Corporation and Fox West Coast Theatres Corporation submit revisions of Proposed Jury Instructions Nos. 15, 34 and 41 heretofore filed in the above entitled action on July 5, 1956 [363] and proposed Additional Jury Instructions 2A, 9A, 12A, 12B, 12C, 12D, 16A, 16B, 17A, 25A

25B, 29A, 31A, 32A, 33A, 33B, 33C, 34A, 34B, 45A, 45B, 45C, 45D and 57A.

Dated: August 14, 1956.

Respectfully submitted,

O'MELVENY & MYERS,

/s/ By HOMER I. MITCHELL,
NEWLIN, TACKABURY &
JOHNSTON,

/s/ By FRANK R. JOHNSTON,

Attorneys for Defendants [364]

Defendants' Instruction No. 2A

You shall not consider as evidence any statement of counsel made during the trial, unless such statement was made as an admission or stipulation conceding the existence of a fact or facts.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken out by the court; such matter is to be treated as though you never had known of it.

You must never assume or speculate to be true any insinuation carried or suggested by a question put to a witness by examining counsel. The examiner's question is not evidence except only as it explains or throws light upon the answer. [365]

Defendants' Instruction No. 9A

You must be satisfied by the evidence that plaintiff made a specific, good faith request to each defendant distributor for any earlier run upon which it now seeks to base its damages. The law does not

Inglewood-Westchester area and contends that the decision of each of the distributor defendants with respect to the licensing of pictures to the Paradise Theatre was made by each distributor individually after an independent consideration of the business aspects of the situation.

If you find that the decision of the distributor defendants during the period with respect to licensing of motion pictures to the Paradise Theatre was reached independently and in the exercise of its own business judgment, then such licensing could not form the basis of a conspiracy. [371]

Defendants' Instruction No. 16A

You are instructed that it is presumed that defendants have not conspired in violation of the antitrust laws and that the burden is upon plaintiff to overcome that presumption and to prove conspiracy by a preponderance of the evidence. To the extent that plaintiff relies on circumstantial evidence, the burden is on plaintiff to prove that the circumstances upon which reliance is placed are entirely inconsistent with the presumption that defendants have complied with the antitrust laws.

Defendants' Instruction No. 16B

You are instructed that there is no direct evidence of the conspiracy charged in this case. Therefore, plaintiff's claim with respect to the conspiracy issue is completely dependent upon circumstantial evidence. [373]

Defendants' Instruction No. 17A

Similar methods of distribution, if they are rea-

sonable methods of the light of all of the circumstances, are not evidence of conspiracy regardless of whether you may be convinced that some other method of distribution would be better than the various methods used by defendant distributors. Similar methods of distribution, resulting from reasonable business solutions of identical problems are not evidence of conspiracy. [374]

Defendants' Instruction No. 25A

There is evidence that the Paradise Theatre did not gross as much or pay as much film rental on comparable runs as some other theatres in the Inglewood-Westchester area. This is a circumstance which each distributor was entitled to take into consideration in dealing with the Paradise Theatre. Conduct based upon this consideration cannot furnish any basis for an inference of conspiracy. [375]

Defendants' Instruction No. 25B

You are instructed, as a matter of law, that the licensing of first runs to theatres in the downtown Los Angeles, Hollywood and Wilshire districts to the exclusion of theatres in outlying districts in the Los Angeles metropolitan area is reasonable. Such practice on the part of any or all of the distributor defendants does not furnish any basis for an inference of conspiracy among them. [376]

Defendants' Instruction No. 29A

Differing practices of the distributor defendants after the 1950-1951 period with which this case is concerned are not competent evidence, in view of

authorize a person aggrieved to recover in the absence of such a good faith request. [366]

Defendants' Instruction No. 12A

You are instructed that as a matter of law the plaintiff has no right to recover because it was not licensed motion pictures on Los Angeles first run. You shall not give any consideration to plaintiff's claim that defendants conspired in respect of licensing Los Angeles first run. [367]

Defendants' Instruction No. 12B

You are instructed that, as a matter of law, the plaintiff has no right to recover because of plaintiff's claim that it was refused a 7 day availability except by bidding. You shall not give any consideration to plaintiff's claim that defendants conspired in respect of licensing their respective 7 day availabilities. [368]

Defendants' Instruction No. 12C

(If Instruction No. 12A is given and No. 12B is not given.)

It is your duty to consider, under all of my instructions, whether the Loew's, Warner Bros., Paramount and Universal defendants and the Twentieth Century-Fox defendants (including National Theatres Corporation and Fox West Coast Theatres Corporation) conspired with each other during the period from September 17, 1950 to September 17, 1951 to refuse a 7 day availability to the Paradise Theatre except by bidding. Each defendant had a right, acting independently, to refuse

a 7 day availability to the Paradise except by bidding, regardless of whether the theatres required to bid were in substantial competition. A fundamental question for you to determine is whether defendants so conspired with each other during that one-year period. [369]

Defendants' Instruction No. 12D

(If Instruction Nos. 12A and 12B are not given.)

It is your duty to consider, under all of my instructions, whether the Loew's, Warner Bros., Paramount and Universal defendants and the Twentieth Century-Fox defendants (including National Theatres Corporation and Fox West Coast Theatres Corporation) conspired with each other during the periods from September 17, 1950 to September 17, 1951 to refuse Los Angeles first run pictures to the Paradise Theatre or to refuse a 7 day availability to the Paradise Theatre except by bidding. Each defendant had a right, acting independently, to refuse Los Angeles first run pictures to the Paradise and to refuse a 7 day availability to the Paradise except by bidding, regardless of whether the theatres required to bid were in substantial competition. A fundamental question for you to determine is whether defendants so conspired with each other during that one-year period.

Defendants' Instruction No. 15

(In lieu of Instruction No. 15, filed July 5, 1956.)

Each of the defendants has denied that there was any conspiracy among any of them concerning the licensing of motion pictures to the theatres in the

Inglewood-Westchester area and contends that the decision of each of the distributor defendants with respect to the licensing of pictures to the Paradise Theatre was made by each distributor individually after an independent consideration of the business aspects of the situation.

If you find that the decision of the distributor defendants during the period with respect to licensing of motion pictures to the Paradise Theatre was reached independently and in the exercise of its own business judgment, then such licensing could not form the basis of a conspiracy. [371]

Defendants' Instruction No. 16A

You are instructed that it is presumed that defendants have not conspired in violation of the antitrust laws and that the burden is upon plaintiff to overcome that presumption and to prove conspiracy by a preponderance of the evidence. To the extent that plaintiff relies on circumstantial evidence, the burden is on plaintiff to prove that the circumstances upon which reliance is placed are entirely inconsistent with the presumption that defendants have complied with the antitrust laws.

Defendants' Instruction No. 16B

You are instructed that there is no direct evidence of the conspiracy charged in this case. Therefore, plaintiff's claim with respect to the conspiracy issue is completely dependent upon circumstantial evidence. [373]

Defendants' Instruction No. 17A

Similar methods of distribution, if they are rea-

sonable methods of the light of all of the circumstances, are not evidence of conspiracy regardless of whether you may be convinced that some other method of distribution would be better than the various methods used by defendant distributors. Similar methods of distribution, resulting from reasonable business solutions of identical problems are not evidence of conspiracy. [374]

Defendants' Instruction No. 25A

There is evidence that the Paradise Theatre did not gross as much or pay as much film rental on comparable runs as some other theatres in the Inglewood-Westchester area. This is a circumstance which each distributor was entitled to take into consideration in dealing with the Paradise Theatre. Conduct based upon this consideration cannot furnish any basis for an inference of conspiracy. [375]

Defendants' Instruction No. 25B

You are instructed, as a matter of law, that the licensing of first runs to theatres in the downtown Los Angeles, Hollywood and Wilshire districts to the exclusion of theatres in outlying districts in the Los Angeles metropolitan area is reasonable. Such practice on the part of any or all of the distributor defendants does not furnish any basis for an inference of conspiracy among them. [376]

Defendants' Instruction No. 29A

Differing practices of the distributor defendants after the 1950-1951 period with which this case is concerned are not competent evidence, in view of

changed conditions, and are not to be considered by you in any way. [377]

Defendants' Instruction No. 31A

You are instructed, as a matter of law, that the licensing of 7 day availabilities to theatres in the principal suburban cities of the Los Angeles metropolitan area, such as Inglewood, Huntington Park, Pasadena and Glendale, and a refusal of a separate 7 day availability to theatres in less important suburban communities adjacent to those cities is reasonable. Such practice on the part of any or all of the distributor defendants does not furnish any basis for an inference of conspiracy. [378]

Defendants' Instruction No. 32A

"Substantial competition" as the term is used in this case refers to competition between theatres for patronage. There is no precise definition of what constitutes substantial competition. There is no legal requirement that such competition be of any particular degree or extend to any particular percentage of such patronage. Competition for patronage is substantial if it is not trivial or inconsequential but is real and has substance. [379]

Defendants' Instruction No. 33A

Since there is no competent evidence in this case that there was not substantial competition between theatres in Downtown Los Angeles, Hollywood, or the Wilshire district and theatres in outlying areas on first run Los Angeles, plaintiff has failed to discharge its burden of proof on this question. [380]

Defendants' Instruction No. 33B

Substantial competition with respect to first run Los Angeles does not depend upon the amount of competition for patronage between a particular outlying theatre, such as the Paradise (were it to be licensed first run), and the theatre or theatres playing first run. Competition from the Paradise Theatre cannot be considered as though the Paradise were the only theatre involved. Other theatres in like outlying areas surrounding urban Los Angeles must be considered, for the existence of substantial competition depends upon the effect of licensing first runs to a theatre or theatres in all like outlying areas. Plaintiff's own witnesses have admitted that theatres playing Los Angeles first run in Downtown Los Angeles, Hollywood or the Wilshire district, drew some part of their patronage from each of such outlying areas, aggregating more than a trivial or inconsequential part of their patronage. You are instructed that this constitutes substantial competition with respect to first run.

Defendants' Instruction No. 33C

Clearance is defined as "the period of time, usually stipulated in license contracts, which must elapse between runs of the same feature within a particular area or in specified theatres". There is no evidence that clearance was granted to any theatre in the Inglewood-Westchester area against the Paradise Theatre. You are instructed that clearance between subsequent runs is not an issue in this case. [382]

Defendants' Instruction No. 34

(In lieu of Instruction No. 34, filed July 5, 1956.)

You are instructed that each defendant distributor had the right, acting individually, to determine how many 7-day runs it would license in the Inglewood-Westchester area regardless of whether or not theatres in that area were in "substantial competition". You are further instructed that, having determined how many 7-day runs to offer in that area, each defendant had the right, acting individually, to offer them by bidding or negotiating among theatres in that area, regardless of whether the theatres were in "substantial competition." The defendant distributors are not required to license a 7-day run to every theatre which was not in "substantial competition" with some other theatre or theatres. [383]

Defendants' Instruction No. 34A

In determining the reasonableness or unreasonableness of differing distribution plans of defendants in which each offered the Paradise Theatre the opportunity to bid for the 7 day run against various other theatres (depending upon the respective plans), the matter of "substantial competition" among the theatres included in the bidding is only one of a number of matters which you should weigh. You must also consider the location of the theatres, their ability to pay film rentals, the business desirability or undesirability of providing a 7 day run for each theatre in the area which was not in substantial competition with some

other theatre or theatres, the problem of offering separate runs to various theatres or groups of theatres in a manner which would be fair to all theatres in the area, the difficulty and over-all effect of selecting which theatres should be required to bid and which should have a 7 day run without bidding, and other matters of that kind which a reasonable business man would consider in determining his business policies. Even if you should determine that a distributor required the Paradise to bid against theatres which you may find were not in substantial competition with the Paradise, such a determination would not necessarily require you to find that such conduct was unreasonable. Where the circumstances are such that it would be reasonable to require theatres not in substantial competition to bid for the 7 day run or runs offered by a particular distributor, then the conduct of the distributor in so licensing such [384] run or runs would not be unreasonable and would not be evidence of conspiracy. [385]

Defendants' Instruction No. 34B

Since there is no competent evidence in this case that there was not substantial competition between the Paradise Theatre and other theatres in the Inglewood-Westchester area, plaintiff has failed to discharge its burden of proof on this issue. [386]

Defendants' Instruction No. 41

(In lieu of Instruction No. 41, filed July 5, 1956.)

As part of its burden of proving that plaintiff corporation was injured in its business or prop-

erty by reason of the acts complained of, plaintiff must show by the preponderance or greater weight of the evidence that an injury to its business or property occurred which, absent the alleged conspiracy, would not have occurred in the normal course of business. For example, if it suffered losses merely because plaintiff refused to enter into competition for pictures, or because plaintiff's theatre did not have sufficient grossing capacity to make it a profitable theatre, or because of the excessive number of theatres in the Inglewood-Westchester area, or because of television competition, such losses would not constitute an injury for which recovery can be had under the antitrust laws. [387]

Defendants' Instruction No. 45A

In determining damages, if any, you may not consider in any way the evidences of grosses or profits of the Loyola Theatre or of grosses or profits of the Paradise Theatre on an assumed first run policy. As a matter of law, the plaintiff has no right to recover because it was not licensed motion pictures on Los Angeles first run. [388]

Defendants' Instruction No. 45B

In determining damages, if any, you may not consider in any way the evidence of grosses or profits of the Academy Theatre or of grosses or profits of the Paradise Theatre on an assumed 7 day run. As a matter of law, the plaintiff has no right to recover because of plaintiff's claim that it was not licensed motion pictures on a 7 day run without bidding. [389]

Defendants' Instruction No. 45C

Plaintiff has sought to base its proof of damages upon the assumption that the Paradise and Academy were comparable theatres. In evaluating this evidence, you must take into consideration the evidence with respect to the location of these two theatres, the population around them, and their grossing ability. You must also take into consideration that plaintiff's theory was that it should have been permitted to play a 7 day run day and date with all other theatres in the area. You should determine to what extent such a policy at the Academy Theatre would have reduced the Academy's gross receipts and such a policy at the Paradise Theatre would have affected the gross receipts of the Paradise. If you find that plaintiff is entitled to any damages on account of the manner in which defendants licensed their 7 day runs, it is entitled only to such damages, if any, as it suffered by reason of defendants' claimed conspiratorial refusal to serve the Paradise with a 7 day run playing day and date with the La Tijera and theatres in Inglewood. Plaintiff is not entitled to the difference between the profits it made and the profits it would have made had it been playing an exclusive 7 day run or a 7 day run day and date with one other theatre. [390]

Defendants' Instruction No. 45D

Plaintiff has also sought to base its proof of damages upon the assumption that the Paradise gross receipts on a first run policy would be the

same as the Loyola gross receipts. In evaluating this evidence, you must take into consideration that plaintiff's claim was that it should have been permitted to play first run day and date with other theatres in the area except the La Tijera and the Loyola. You should determine to what extent such a policy at the Loyola would have reduced the Loyola gross receipts and how such a policy at the Paradise Theatre would have affected the gross receipts of the Paradise. If you find that plaintiff is entitled to any damages on account of the manner in which defendants licensed their first runs, it is entitled only such damages, if any, as it suffered by reason of defendants' claimed conspiratorial refusal to serve the Paradise with first run playing day and date with other theatres in the Inglewood-Westchester area except the La Tijera and the Loyola. Plaintiff is not entitled to the difference between the profits it made and the profits it would have made had it been the only theatre playing first run in the Inglewood - Westchester area. [391]

Defendants' Instruction No. 57A

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. How-

ever, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors. [392]

Acknowledgment of Service Attached. [393]

[Endorsed]: Filed August 14, 1956.

[Title of District Court and Cause.]

DEFENDANTS' PROPOSED JURY INSTRUCTIONS (ADDITIONAL AND REVISED)
(SUPPLEMENTAL)

Defendants Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation, Paramount Pictures Inc., Paramount Film Distributing Corporation, Loew's Incorporated, Universal Pictures Company, Inc., Universal Film Exchanges, Inc., Twentieth Century-Fox Film Corporation, National Theatres Corporation and Fox West Coast Theatres Corporation submit revisions of Proposed Jury Instructions Nos. 10 and 42 heretofore filed in the above entitled action on July 5, 1956 [408] and Proposed Jury Instruction No. 29A heretofore filed in the above entitled action on August 14, 1956, and Proposed Additional Jury Instructions Nos. 13A and 13B.

Dated: August 16, 1956.

Respectfully submitted,

O'MELVENY & MYERS,
/s/ By HOMER I. MITCHELL,
NEWLIN, TACKABURY &
JOHNSTON,
/s/ By FRANK R. JOHNSTON,

Attorneys for Defendants. [409]

Defendants' Instruction No. 10

(In lieu of Instruction No. 10 filed July 5, 1956.)

No theatre has the right, as a matter of law, to compel a motion picture distributor to license it a prior run. [410]

Defendants' Instruction No. 13A

In determining whether any of the defendants were parties to a conspiracy as alleged by plaintiff, you may not consider evidence of acts and declarations of corporations which are not parties to this lawsuit, such as RKO, Columbia, United Artists Corporation and United Artists Theatres Circuit.

Defendants' Instruction No. 13B

When a person who is an agent pursues some activity or object or makes declarations not for his principal, but for the agent's own purpose, or pursues some activity or object or makes declarations in behalf of some other corporation or entity, the principal is not responsible for anything done or not done or declarations made during the course of such activity.

This is true even though the agent uses the principal's property. [412]

Defendants' Instruction No. 29A

(In lieu of Instruction No. 29A filed August 14, 1956.)

Changes in distribution practices of the distributor defendants after the 1950 - 1951 period with which this case is concerned are not competent evidence, in view of changed conditions, and are not to be considered by you in any way. [413]

Defendants' Instruction No. 42

(In lieu of Instruction No. 42 filed July 5, 1956.)

In determining whether the acts of the defendants caused any injury to the plaintiff's Paradise Theatre, you are entitled to take into consideration plaintiff's claim that it was not in substantial competition with other theatres in the Inglewood-Westchester area. If in fact the Paradise Theatre was not in substantial competition with such theatres, you may consider whether and to what extent that fact indicates that the Paradise did not lose any substantial or significant amount of patronage by reason of the fact that it sometimes played pictures later than other theatres in the area. [414]

Acknowledgment of Service Attached. [415]

[Endorsed]: Filed August 16, 1956.

[Title of District Court and Cause.]

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S JURY INSTRUCTIONS

Defendants Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation, Paramount Pictures Inc., Paramount Film Distributing Corporation, Loew's Incorporated, Universal Pictures Company, Inc., Universal Film Exchanges, Inc., Twentieth Century-Fox Film Corporation, National Theatres Corporation and Fox West Coast Theatres Corporation hereby object to Plaintiff's Proposed Jury Instructions filed herein on or about July 5, 1956 and Plaintiff's Proposed Supplemental Instructions filed herein on or about August 14, 1956, in the [416] following particulars and upon the following grounds: [417]

* * * * *

10. Object to Plaintiff's Instruction No. 12 in its entirety upon the ground that it improperly equates knowledge with conspiracy. Substantially uniform conduct knowingly engaged in, as the result of reasonable solutions to common business problems, is not evidence of conspiracy and certainly is not the equivalent of conspiracy. [420]

* * * * *

19. Object to Plaintiff's Instruction No. 6A in its entirety because it does not recognize that only unreasonable restraints of trade are inviolation of the Sherman Act. Moreover, singling out the "Westchester" area in lines 9 and 10 of said Instruction

suggests that Westchester is, in the Court's view, separate and distinct from Los Angeles and Inglewood, whereas the evidence is undisputed that it is a part of the City of Los Angeles, adjacent to the City of Inglewood. [423]

* * * * *

21. Object to Plaintiff's Instruction No. 6C in its entirety because it again seeks to inject the issue of monopoly into this case, whereas no such issue has been framed or tried. (See Objection No. 5, *supra*.) Moreover, the statement "It is unlawful to foreclose competitors from any substantial market," ignores completely that it is perfectly lawful to do so by means which are not violative of the Sherman Act.

22. Object to Plaintiff's Instruction No. 10A in its entirety. This Instruction speaks in terms of "an attempt to monopolize", whereas the only violation charged in the First Amended Complaint is a conspiracy unreasonably to restrain and monopolize trade and commerce. (See Objection No. 5, *supra*.) Moreover, the Instruction is almost completely unintelligible. There is no such thing as a "first run motion picture" in the sense in which plaintiff uses it, since any motion picture, which is an article of trade or commerce, is exhibited upon various runs. There is no evidence in the record to support the suggestion that plaintiff was "eliminated from competition". Moreover, the Instruction ignores completely that a finding of conspiracy is essential to plaintiff's cause of action and attempts to instruct the jury that the mere fact of

control over the pictures which they produced, constituted unreasonable restraint of trade. [424]

* * * * *

Dated: August 15, 1956.

Respectfully submitted,

NEWLIN, TACKABURY &
JOHNSTON,

/s/ By FRANK R. JOHNSTON,
O'MELVENY & MYERS,

/s/ By HOMER I. MITCHELL,
Attorneys for Defendants. [426]

Acknowledgment of Service Attached. [427]

[Endorsed]: Filed August 16, 1956.

[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED ADDITIONAL
AND SUBSTITUTED INSTRUCTIONS

Plaintiff's Proposed Jury Instruction No. 8B (to
Be Substituted for Plaintiff's Instruction No.
8A)

If you find that the defendants named in this case entered into the conspiracy charged or that such conspiracy included other corporations or individuals whom you find to have participated in such a conspiracy, then you are instructed that the acts, statements or conduct of each conspirator are chargeable to all of the conspirators. In law, conspirators are deemed to be the agents of each other in carrying out the purposes of the conspiracy.

Plaintiff's Proposed Instruction No. 20A

A proper way for plaintiff to establish the amount of the damage in this case is by showing on the basis of reasonable evidence what its theatre would have earned during the period September 1, 1950 to September 1, 1951 in the absence of the alleged conspiracy, and compare this result with the actual results incurred during this period. In this connection, plaintiff may compare its theatre with comparable theatres. As evidence of what the Paradise would have earned had it had access to a regular supply of feature pictures on Los Angeles first run, plaintiff has put in evidence the operating statements of the Loyola Theatre. If you find that in the absence of the conspiracy plaintiff would have operated on a Los Angeles first run, and if you further find that the Paradise Theatre and the Loyola Theatre are comparable, then you may consider the evidence and all other evidence in the record to ascertain the amount of damage, if any, suffered by the Paradise Theatre.

Plaintiff has also introduced evidence showing the operating statements of the Academy Theatre which operated on an availability of 7 days after Los Angeles first run closing. If you find that in the absence of conspiracy plaintiff would have operated regularly on an availability of 7 days after Los Angeles closing, and you further find that the Paradise Theatre and the Academy Theatre are comparable, then you may consider this evidence, together with all other evidence in ascertaining the

amount of damage, if any, suffered by the Paradise Theatre.

Under plaintiff's evidence on a so-called first run theory, the maximum damages which it may recover is \$.

Under plaintiff's evidence on a policy of exhibition of 7 days after Los Angeles first run closing, the maximum verdict which you may return is \$. [451]

Respectfully submitted,

ELWOOD S. KENDRICK,
JOSEPH ALIOTO,
JACK CORINBLIT,
DAN HERSCHER. [452]

[Endorsed]: Filed August 17, 1956.

[Title of District Court and Cause.]

PLAINTIFF'S MEMORANDUM WITH REFERENCE TO CERTAIN SPECIFIED JURY INSTRUCTIONS WHICH ARE STILL OPEN AND WITH REFERENCE TO MODIFICATION OF CERTAIN INSTRUCTIONS

In Re Jury Instructions Proposed by the
Defendants

Defendants' Proposed Jury Instruction No. 33:

This instruction is the one which states, in effect, that the burden is upon the plaintiff to prove by a preponderance of the evidence that substantial

competition did not exist between or among the theatres. The Court, at the hearing on August 17, 1956, requested that plaintiff consider this instruction and advise the Court of his position.

Since plaintiff, of course, has the burden to prove all of the issues in this case by a preponderance of the evidence, and since this would include issues involving "substantial competition", plaintiff does not object to this instruction. [455]

* * * * *

[Endorsed]: Filed August 20, 1956.

[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED MODIFIED AND SUPPLEMENTAL INSTRUCTIONS

Plaintiff's Instruction No. 6C Revised Pursuant to
the Court's Request:

"It is not always necessary to find a specific intent with respect to a restraint of trade or a conspiracy to monopolize in order to find that the anti-trust laws have been violated. No conspirator in restraint of trade and no participant in a conspiracy to monopolize does so without being conscious of what he is doing.

"It is unlawful to foreclose competitors from any substantial market. The employment of a conspiracy to monopolize, to foreclose competition, to gain a competitive advantage or to destroy a competitor, is unlawful." [470]

Plaintiff's Proposed Instruction No. 10B Revised
to Meet Objections of Defendants and Suggestion of Court:

"You are charged that it would be unlawful and a violation of the anti-trust laws for any group of corporations to conspire to monopolize the first run exhibition of motion pictures in the City of Los Angeles. It is unlawful to conspire to monopolize by conspiring to refuse to license pictures first run to any theatre other than those operated, managed and booked by other participants in the conspiracy to monopolize, or by conspiring to restrict the pictures which they would so license to outsiders to the pictures which the other participants found to be undesirable." [471]

Plaintiff's Proposed Jury Instruction No. 12A

You are instructed that it is unlawful under the Sherman Act for a distributor of motion pictures to grant an unreasonable clearance between two theatres. A clearance granted between two theatres which are not in substantial competition is unreasonable.

The word "clearance" means

"The period of time usually stipulated in license contracts, which must elapse between runs of the same picture within a particular area or in specified theatres."

The term "run" means

"The successive exhibitions of a motion picture in a given area, first run being the first exhibition in that area, second run being the next subsequent, etc."

U. S. vs. Paramount Pictures, Inc., et al., 334
U. S. 131, 145; 92 L. ed. 1260, 1286.

If you find that the defendants granted clearance to the Academy, United Artists, Fox-Inglewood, Fifth Avenue Southside, La Tijera or Imperial Theatres over the Paradise Theatre, then with respect to the theatre receiving it, such clearance would be unlawful if that theatre was not in substantial competition with the Paradise Theatre.

Plaintiff's Proposed Instruction No. 13A, Revised
to Meet the Objections of the Defendants:

"If you find that the defendants or any of them conspired to deprive the Paradise Theatre of pictures for exhibition on an availability of 7 days after Los Angeles first run closing, then such conspiracy may unreasonably restrain trade in violation of the anti-trust laws even though the Paradise Theatre and other theatres in the Inglewood-Westchester area were in substantial competition." [473]

The Court's Proposed Substitute for Defendants'
Proposed Instruction No. 37, which Plaintiff
Adopts and Hereby Proposes:

"The issue in this case is whether the sum total of the defendants' dealings with the Paradise Theatre resulted in an unreasonable restraint of competition. If what the defendants did, did not unreasonably restrain competition, the fact that they may have acted in concert would not establish a violation of the anti-trust law.

"It is the law that if the purpose of a combina-

tion is to carry out a conspiracy to monopolize, a restraint otherwise reasonable, may be unlawful."

Plaintiff's Proposed Modification of Defendants' Instruction No. 55:

"In determining whether the acts of the defendants caused any injuries to plaintiff's Paradise Theatre, you are entitled to take into consideration plaintiff's claim that it was not in substantial competition with other theatres in the Inglewood-Westchester area. If you find that the Paradise Theatre was not in substantial competition with such theatres, you may then consider whether it would or would not have lost any substantial or significant amount of the patronage by reason of the fact that it sometimes played pictures later than other theatres in the area." (Modification is portion underlined in the second sentence of this instruction.) [475]

Respectfully submitted,

ELWOOD S. KENDRICK,
JOSEPH ALIOTO,
JACK CORINBLIT,
DAN HERSCHER,

Attorneys for Plaintiff. [476]

Acknowledgment of Service Attached. [477]

[Endorsed]: Filed August 21, 1956.

[Title of District Court and Cause.]

MEMORANDUM RE JURY INSTRUCTIONS

* * * * * [486]

Defendants' Instruction No. 29C

(To be given only if No. 29A is not given.)

In considering the changes which have been made in distribution practices since 1950 and 1951, you are instructed that if such changes are as consistent with an honest effort to keep up with changing conditions as with the prior existence of a conspiracy, they would not form any basis for an inference of conspiracy. [493]

Acknowledgment of Service Attached. [494]

[Endorsed]: Filed August 21, 1956.

[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED INSTRUCTION TO JURY No. 37C

Plaintiff's Proposed Instruction to Jury No. 37C

There has been mentioned in this case a number of other cases. These include the decision of this Court in the Partmar Case and a decision in the Baldwin Case. Other cases have also been mentioned.

You are instructed that you are to decide this case upon the facts of this case only. You are not bound by any finding of fact in any other case, including the Partmar Case or any other case that has been mentioned. This case should be decided

by you upon all the facts and the evidence and under these instructions. [496]

Respectfully submitted,

ELWOOD S. KENDRICK,
JACK ALIOTO,
JACK CORINBLIT,
DAN HERSCHER,

/s/ By JACK CORINBLIT,
Attorneys for Plaintiff. [497]

Acknowledgment of Service Attached. [498]
[Endorsed]: Filed Aug. 23, 1956.

NOTE FROM JURY—No. 1

The large map of theaters in the L. A. Metropolitan area.

Exhibit 46A bid letters. [499]

[Endorsed]: Filed August 23, 1956.

NOTE FROM JURY—No. 2

(1) Bid letters 1950-1951.

(2) Pink office memo read by Mr. Mitchell over Mr. Kornbitt's objection.

(3) Mr. Cupper's letter read over Mr. Mitchell's objection and they stipulated as to Mr. Ball's testimony.

(4) Mr. Schreiber's letters to distributors asking for first run and seven day run. [501]

[Endorsed]: Filed August 23, 1956.

NOTE FROM JURY

Judge Westover:

Could we please have the bid forms showing amount each exhibitor bid during this period 1950-1951. [503]

[Endorsed]: Filed August 27, 1956.

NOTE FROM JURY

Please ask Judge Westover—if he will read the last several pages of Mr. Merriott's testimony. Also Mr. Hickey's testimony when Mr. Kornblitt read his deposition to the effect he knew there was some sort of a deal the way pictures were awarded.

[Endorsed]: Filed August 27, 1956.

[Title of District Court and Cause.]

INTERROGATORY No. 2

During the period from September 18, 1950, to September 17, 1951, were Fox West Coast Theatres Corporation, Twentieth Century-Fox Film Corporation, Loew's Incorporated, or any of them, engaged in a conspiracy with each other to monopolize or unreasonably restrain interstate commerce in the licensing of motion pictures to plaintiff for exhibition in the Inglewood-Westchester area on a 7-day run?

Yes: Yes.

No:.....

Dated: Los Angeles, California, August 28, 1956.

/s/ DOROTHY WOODFORD,
Foreman of the Jury. [507]

[Endorsed]: Filed August 28, 1956.

[Title of District Court and Cause.]

INTERROGATORY No. 1

During the period from September 18, 1950, to September 17, 1951, were Fox West Coast Theatres Corporation, National Theatres Corporation, Twentieth Century-Fox Film Corporation, Warner Bros. Pictures, Inc., Warner Bros. Picture Distributing Corporation, Paramount Pictures Inc., Paramount Film Distributing Corporation, Loew's Incorporated, Universal Corporation, and Universal Film Exchanges, Inc., or any of them, engaged in a conspiracy with each other to monopolize or unreasonably restrain interstate commerce in the licensing of motion pictures for exhibition on Los Angeles first run?

Yes:.....

No: No.

Dated: Los Angeles, California, August 28, 1956.

/s/ DOROTHY WOODFORD,
Foreman of the Jury. [508]

[Endorsed]: Filed August 28, 1956.

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above entitled cause, find in favor of the plaintiff, Paradise Theatre Building Corporation, and assess damages against the defendants, Fox West Coast Theatres Corporation, Twentieth Century-Fox Film Corporation, Loew's Incorporated, in the sum of Twenty Thousand Dollars (\$20,000).

Dated: Los Angeles, California, August 28, 1956.

/s/ DOROTHY WOODFORD,
Foreman of the Jury. [509]

[Endorsed]: Filed August 28, 1956.

[Title of District Court and Cause.]

MOTION TO SET ASIDE VERDICT AND TO ENTER JUDGMENT IN ACCORDANCE WITH MOTION FOR A DIRECTED VER- DICT

Defendant Loew's Incorporated moves the Court, pursuant to Rule 50(b) of the Federal Rules of Civil Procedure, to set aside the jury verdict against Loew's Incorporated received on August 28, 1956, and to enter judgment in favor of Loew's Incorporated in accordance with its motion for a directed verdict which was made at the close of all the evidence and taken under submission by the Court.

Said motion is made upon each and all of the following grounds: [510]

1. There is no substantial evidence to support said verdict.

2. There is no evidence that the requirement of competitive bidding for a single 7 day run in the Inglewood-Westchester area was the result of a conspiracy between Loew's, Twentieth Century-Fox and Fox West Coast.

3. The requirement of competitive bidding for a single 7 day run in the Inglewood-Westchester area, even if by agreement, is not an unreasonable restraint of trade.

4. There is no substantial evidence of lack of substantial competition between the Paradise Theatre and the La Tijera, Fox Inglewood, United Artists, Academy and Fifth Avenue theatres against which the Paradise Theatre was required to bid.

5. The agreement for division of product in the Inglewood area, prior to May 1, 1950, does not constitute substantial evidence to support said verdict because:

(a) Such agreement was lawful;

(b) Such agreement is not one of the conspiratorial acts charged in the complaint and is, therefore, not within the issues;

(c) The evidence is uncontradicted that said agreement was not in effect after May 1, 1950;

(d) There was no injury to the Paradise Theatre, in any event, since it had an opportunity to bid for all Loew's pictures on the 7 day run. [511]

6. There is no evidence of what damage was

caused by any alleged conspiracy between Loew's, Inc., Twentieth Century-Fox and Fox West Coast with respect to the licensing of motion pictures to plaintiff on a 7 day run.

7. The conspiracy found by the jury as to three defendants is not the conspiracy alleged and tried as to ten defendants.

Dated: August 31, 1956.

Respectfully submitted,

O'MELVENY & MYERS,

/s/ By HOMER I. MITCHELL,

Attorneys for Defendant Loew's
Incorporated. [512]

Acknowledgment of Service Attached. [513]

[Endorsed]: Filed August 31, 1956.

[Title of District Court and Cause.]

MOTION TO SET ASIDE VERDICT AND TO
HAVE JUDGMENT ENTERED IN AC-
CORDANCE WITH MOTION FOR DI-
RECTED VERDICT

Defendants Twentieth Century-Fox Film Corporation and Fox West Coast Theatres Corporation, and each of them, pursuant to Rule 50(b) F.R.C.P. hereby move that the court set aside the verdict of the jury herein rendered on August 28, 1956, and to enter judgment in favor of said defendants in accordance with said defendants' motion for directed verdict heretofore made herein on August

17, 1956 upon the grounds stated at said time and on the following specific grounds:

1. That as a matter of law a verdict against only three defendants out of ten alleged to have participated in a conspiracy [514] must be set aside under the pleadings and proof adduced herein.

2. That there was no evidence adduced of damage resulting to plaintiff from any asserted conspiracy participated in only by Twentieth Century-Fox Film Corporation, Fox West Coast Theatres Corporation and Loew's Incorporated, and further that no damage could have resulted from such asserted conspiracy for the reason that the jury found no conspiratorial deprivation of product to the plaintiff by defendants Warner's, Paramount and Universal, and no claim of conspiratorial deprivation of product has been asserted with respect to United Artists, Columbia, RKO, Republic, Lippert, Eagle Lion, Allied Artists, Monogram and Film Classics.

3. That the evidence is insufficient to support a verdict in plaintiff's favor.

4. That there is no evidence that defendants Twentieth Century-Fox Film Corporation and Fox West Coast Theatres Corporation, or either of them, participated in a conspiracy in unreasonable restraint of trade or to monopolize resulting in damage to plaintiff for the period from September, 1950, through September, 1951.

5. That there is no evidence connecting defendants Twentieth Century-Fox Film Corporation or Fox West Coast Theatres Corporation, or either of

them, with any combination or conspiracy with defendant Loew's Incorporated to unreasonably restrain or monopolize the distribution or exhibition of feature motion pictures in the Inglewood-Westchester area on a seven-day run from September, 1950, through September, 1951.

6. That there is no evidence of the fact of legally recoverable damage to plaintiff caused by defendants Twentieth Century-Fox Film Corporation or Fox West Coast Theatres Corporation, or either of them.

7. That there is no legally sufficient evidence of the amount of damage. That the amount of damage was based upon [515] conjecture and speculation.

Respectfully submitted,

NEWLIN, HOLLEY, TACKABURY
& JOHNSTON,

/s/ By FRANK R. JOHNSTON,

Attorneys for Defendants Twentieth Century-Fox
Film Corporation, National Theatres Corpora-
tion and Fox West Coast Theatres Corpora-
tion. [516]

[Endorsed]: Filed August 31, 1956.

[Title of District Court and Cause.]

PETITION RE AWARD OF ATTORNEYS'
FEES AND AFFIDAVIT OF JACK COR-
INBLIT IN SUPPORT THEREOF

Petition is hereby made by plaintiff in the above-

entitled action for an award of reasonable attorneys' fees as provided in 15 U.S.C.A., Section 15.

In support of said petition, there is attached hereto an Affidavit of Jack Corinblit, Esq., and there is filed herewith an Affidavit of Elwood S. Kendrick, Esq., two of the attorneys in the above entitled action. This petition is based upon these affidavits and upon all of the files and records in said action.

Respectfully submitted,

ELWOOD S. KENDRICK,
JOSEPH ALIOTO,
JACK CORINBLIT,
DAN HERSCHER,
/s/ By JACK CORINBLIT,
Attorneys for Plaintiff. [517]

Affidavit of Jack Corinblit

State of California

County of Los Angeles—ss.

Jack Corinblit, being duly sworn, deposes and says as follows:

1. I am one of the attorneys of record in the above entitled action; since January 1, 1956, I have been familiar with the proceedings taken in connection therewith.

2. I hold the degree of Doctor of Laws from the Law School of the University of Chicago. Since 1951, I have been engaged almost exclusively in legal work in the specialized field of the Sherman

Act and Clayton Act, and particularly in connection with anti-trust cases brought under these statutes in connection with the motion picture industry.

3. In connection with these specialized legal services, I have been engaged as one of the principal attorneys representing the plaintiffs in approximately fifteen cases, all brought before this Honorable Court.

4. In this action, from January 1, 1956, I was charged with the primary responsibility of preparation of this case for trial. During the period from January 1, 1956 to February 23, 1956, and from April 5, 1956 to July 9, 1956, I spent substantially all of my time in preparation of the above entitled case for trial. This preparation included interviewing witnesses, examination of records of the plaintiff and all of the defendants, collecting exhibits, the taking of depositions, and the conferences with witnesses and officers of the plaintiff corporation in preparation for the trial.

I attended as attorney for plaintiff the depositions of fourteen witnesses on 39 separate days as indicated below: [518]

February 13, 14, 15, 16, 21, 23, 1956—Deposition of Alex Schreiber.

April 9, 10, 11, 1956—Deposition of Max Schreiber.

April 11, 1956—Deposition of Harry Rackin.

April 26, 27, 1956—Deposition of Marco Wolff.

May 3, 1956—Deposition of Sidney Lehman.

May 8, 9, 1956—Deposition of Alex Schreiber.

May 10, 1956—Deposition of Sydney Lehman.

May 15, 16, 1956—Deposition of Alex Schreiber.

May 17, 1956—Deposition of Sidney Lehman.

May 18, 21, 23, 1956—Deposition of Alex Schreiber.

May 24, 1956—Deposition of Sydney Lehman.

May 25, 28, 1956—Deposition of Alex Schreiber.

June 6, 1956—Deposition of Sydney Lehman.

June 6, 1956—Deposition of Alex Schreiber.

June 9, 1956—Deposition of Sydney Lehman.

June 15, 1956—Deposition of Alfred Taylor.

June 20, 1956—Deposition of George Hickey.

June 21, 1956—Deposition of Fred Greenberg.

June 25, 26, 1956—Deposition of John Bertero.

June 28, 1956—Deposition of William Marriott.

June 28, 1956—Deposition of Irving Epstein.

June 29, 1956—Deposition of Edwin Zable.

July 3, 1956—Deposition of Morris Sudmin.

July 5, 1956—Deposition of Bert Pirosh.

July 6, 1956—Deposition of George Bowser.

The foregoing depositions covered 2968 pages of transcript.

5. The total number of hours spent by me in preparation of this case for trial was in excess of 550 hours.

6. The trial of this action commenced on July

10, 1956 and was completed by the return of a verdict by the jury on August 28, 1956, covering a period of 30 trial days.

7. My associate in the trial of this case, Dan Herscher, Esq., participated in the trial of this case for the entire 30 trial days.

8. A reasonable hourly rate for the 550 hours of services rendered in connection with the preparation of this case for trial is \$40.00 per hour, or a total of \$22,000. A reasonable hourly rate for the 240 hours of services rendered by Elwood S. Kendrick, Esq. in connection with the preparation of this case for trial is \$40.00 per hour, or a total of \$9600.00. A reasonable daily rate for the 30 days of trial services by your affiant is \$250 per day, or a total of \$7500.00; and a reasonable daily rate for the 30 days of trial services by Dan Herscher, Esq., is \$125.00 per day, or a total of \$3750.00.

Wherefore, your affiant prays an award of reasonable attorneys' [520] fees in the above entitled case in the amount of \$42,850.00.

/s/ JACK CORINBLIT,
Affiant.

Subscribed and Sworn to before me this 31st day of August, 1956.

[Seal] /s/ ROBERT S. MORRIS,
Notary Public in and for said County and State.

Acknowledgment of Service Attached. [522]

[Endorsed]: Filed August 31, 1956.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S
PETITION FOR ATTORNEYS' FEES

State of California

County of Los Angeles—ss.

Elwood S. Kendrick, being duly sworn, deposes and says:

1. That he is a graduate of the University of Illinois, College of Law, and received the Degree of L.L.B. from said University in June of 1937.

2. That he is a Member of the Bar of the States of Illinois and California, several of the U. S. District Courts located in said States, the Court of Appeals for the Ninth Circuit, and the U. S. Supreme Court.

3. That during the period from 1943 to 1949 he was employed in a substantial number of actions in several of the United States District Courts, involving Anti-Trust issues.

4. That during the period from 1948 through date, he has [551] been associated as Co-Counsel with Joseph Alioto, of the San Francisco Bar, in a number of actions involving Anti-Trust issues.

5. That since March of 1951, through date, he has been Counsel in several actions involving the motion picture industry.

6. That during the period from January 1, 1949 through date, he has maintained offices in the General Petroleum Building, located at 612 South

Flower Street, Los Angeles 17, California, specializing in patent, trademark and anti-trust law.

7. That records in his office indicate that his work on the instant action, together with that of Joseph L. Alioto, as shown by the attached affidavit, is in excess of two hundred forty (240) hours. That, more particularly, his records show that in preparing the Complaint in this instant action and assembling data thereon, he worked, in the preparation of this action, on the following dates: 3/30/51, 4/12/51, 4/13/51, 4/15/51, 4/17/51, 4/18/51, 4/19/51, 4/25/51, 4/28/51, 4/29/51, 6/15/51, 7/2/51, 7/3/51, 7/5/51, 7/6/51, 7/9/51, 7/13/51, 7/30/51, 9/12/51, 9/13/51, 1/3/52, 1/10/52, 1/23/52, 1/24/52, 2/4/52, 2/8/52, 2/11/52, 2/14/52, 2/19/52, 2/26/52, 2/27/52, 3/3/52, 3/14/52, 3/28/52, 4/16/52, 5/29/52, 6/2/52, 6/11/52, 6/13/52, 6/24/52, 6/25/52, 7/10/52, 7/8/52, 7/18/52, 7/21/52, 8/12/52, 8/13/52, 8/14/52, 8/15/52.

That he had long distance telephone conferences with Mr. Alioto on 3/29/51, 3/30/51, 4/6/51, 4/10/51, 4/16/51, 4/20/51, 6/7/51, 6/11/51, 6/12/51, 6/27/51, 6/29/51, 7/7/51, 7/18/51, 7/24/51, 7/31/51, 9/4/51, 9/10/51, 9/25/51, 10/17/51, 10/22/51, 11/19/51, 12/7/51, 12/10/51, 12/29/51, 1/23/52, 2/8/52, 4/18/52, 4/28/52, 5/9/52, 5/14/52, 5/29/52, 6/10/52, 6/13/52, and 7/17/52.

That his time in the preparation as aforesaid was 116 $\frac{1}{4}$ hours.

That during the period from January 1, 1956, through date, in conferences with Mr. Corinblit, Mr. Schreiber, Mr. Alioto and [552] Mr. Lehman, and in review of files and documents and other

matters relating to the prosecution of this action, affiant has spent in excess of 27 hours.

That as will be noted from the foregoing, affiant's time prior to January 1, 1956 was 116 $\frac{1}{4}$ hours, and that affiant's time since that date was 27 hours, or a total of 143 $\frac{1}{4}$ hours.

That as shown in the affidavit attached hereto, affiant's co-counsel, Joseph L. Alioto, has spent in excess of 100 hours; thus, affiant and Alioto have spent in excess of 240 hours on this matter.

Respectfully submitted,

/s/ ELWOOD S. KENDRICK,
Of Counsel for Plaintiff.

Subscribed and sworn to before me this 13th day of September, 1956.

[Seal] /s/ A. DONALD STOLZY,

Notary Public in and for the County of Los Angeles, State of California. My Commission Expires January 3, 1960. [553]

[Title of District Court and Cause.]

AFFIDAVIT OF JOSEPH L. ALIOTO IN SUPPORT OF PLAINTIFF'S PETITION FOR ATTORNEYS' FEES

State of California

City and County of San Francisco—ss.

Joseph L. Alioto, being first duly sworn, deposes and says:

That he has been an attorney at law specializing in practice in the Federal Courts since December 10, 1940. That he has had sixteen years experience

in antitrust litigation. That he commenced representing the plaintiff in February of 1951 in connection with its claim of discrimination against certain motion picture distributors, and that in the preparation of the complaint and preparation of the trial, he has expended approximately 112 hours.

/s/ JOSEPH L. ALIOTO

Subscribed and sworn to before me this 12th day of September, 1956.

[Seal] /s/ PHYLLIS KNORR,
Notary Public in and for the above county and state. My commission expires 1-6-57. [554]

Certificate of Service by Mail attached.

[Endorsed]: Filed September 21, 1956. [555]

In the United States District Court, Southern
District of California, Central Division

Civil Action No. 13476-HW

PARADISE THEATRE BUILDING CORPO-
RATION, Plaintiff,

vs.

FOX WEST COAST THEATRES CORPORA-
TION, et al., Defendants.

JUDGMENT

The above entitled action having come on for trial on July 10, 1956, the Court, upon motion of the defendants having directed the entry of an

order dismissing defendant United Artists Corporation; the above entitled action having been tried by jury and submitted to said jury for decision on August 23, 1956, and the jury having rendered its verdict on August 28, 1956 for plaintiff and against defendants Twentieth Century-Fox Film Corporation, Fox West Coast Theatres Corporation and Loew's Incorporated; and the jury having further rendered its verdict against plaintiff and in favor of defendants Warner Bros. Pictures, Inc., Warner Bros. Picture Distributing Corporation, Paramount Pictures, Inc., Paramount Film Distributing Corporation, National Theatres Corporation, Universal Corporation and Universal Film Exchanges, Inc.; [556]

It is, Therefore, Ordered, Adjudged and Decreed by the Court as Follows:

1. That the plaintiff have and recover of and from the defendants Twentieth Century Fox Film Corporation, Fox West Coast Theatres Corporation and Loew's, Incorporated, the sum of \$60,000.00, plus the sum of \$10,000.00 as reasonable attorneys' fees, and the sum of \$1,657.69 for costs herein to be taxed in the usual course.

2. That plaintiff take nothing from defendants Warner Bros. Pictures, Inc., Warner Bros. Picture Distributing Corporation, Paramount Pictures, Inc., Paramount Film Distributing Corporation, National Theatres Corporation, Universal Corporation and Universal Film Exchanges, Inc., and that said defendants take nothing as their costs herein.

3. That the complaint in this action against defendant United Artists Corporation, be, and it hereby is, dismissed.

Dated this 24th day of September, 1956.

HARRY C. WESTOVER,
Judge. [557]

Disapproved as to form:

O'MELVENY & MYERS,
/s/ By HOMER I. MITCHELL,

Attorneys for defendants Loew's, Inc., Warner Bros. Pictures, Inc., Warner Bros. Picture Distributing Corporation, Paramount Pictures, Inc., Paramount Film Distributing Corporation, Universal Corporation and Universal Film Exchanges, Inc.

Disapproved as to form:

NEWLIN, HOLLEY, TACKABURY
& JOHNSTON,
/s/ By FRANK R. JOHNSTON,

Attorneys for defendants Twentieth Century-Fox Film Corporation, National Theatres Corporation and Fox West Coast Theatres Corporation.

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Lodged August 31, 1956. Filed, Docketed and Entered September 24, 1956.

[Title of District Court and Cause.]

MEMORANDUM

In the above entitled action the jury rendered a verdict for plaintiff against defendants Twentieth Century-Fox Film Corporation, Fox West Coast Theatres Corporation and Loew's Incorporated and further rendered its verdict against plaintiff and in favor of defendants Warner Bros. Pictures, Inc., Warner Bros. Picture Distributing Corporation, Paramount Pictures, Inc., Paramount Film Distributing Corporation, National Theatres Corporation, Universal Corporation and Universal Film Exchanges, Inc. [559]

Twentieth Century-Fox Film Corporation, Fox West Coast Theatres Corporation and Loew's Incorporated, defendants against whom the verdict was rendered, immediately moved for judgment notwithstanding the verdict upon the ground of fatal variance between the verdict returned and the conspiracy alleged in the complaint. In its complaint plaintiff alleged a conspiracy in which all defendants participated. According to the jury's verdict only three defendants participated in a conspiracy.

The leading case on this subject appears to be *Bordonaro Bros. Theatres, Inc. v. Paramount Pictures, Inc.*, 176 F. 2d 594, in which the Court points out that the question is not whether the conspiracy found is consistent with the conspiracy alleged, but rather whether the conspiracy found is consistent with the evidence in the case.

We are of the opinion that the verdict rendered in the case at bar is consistent with the evidence.

The moving defendants also content there is no evidence to show damage inflicted upon plaintiff by them. The question of conspiracy and the question of damages were questions of fact fairly submitted to the jury for determination. The jury found a conspiracy and determined there was damage as a result thereof. We do not believe the Court should substitute its opinion as to conspiracy and damages in lieu and in stead of the jury's findings. We are also of the opinion that there is evidence in the record from which the jury could determine there was a conspiracy involving the three moving defendants and that damage resulted.

Under the mandate of the law, the amount found by the jury must be trebled and, in addition, the Court must award to plaintiff reasonable attorneys' fees and costs. [560]

Moving defendants contend there should be an allotment of attorney fees and costs among all defendants and that defendants who prevailed should be entitled to recover their costs from plaintiff. According to the moving defendants, the propriety of apportionment of costs which they suggest is supported squarely by *American Box Mach. Co. v. Crosman*, 57 Fed. 1029 (C.C. Mass., 1893). Upon Shepardizing this case, the Court finds it has been mentioned seldom since 1893 and then not with reference to cost apportionment.

As the case at bar was tried in the United States District Court in California, in the absence of any

Federal authority the Court should follow California law. The right of prevailing defendants to receive costs has been decided in *Naify v. Pacific Indemnity Company*, 11 C. 2d 5 (1938), in which the Supreme Court of California said, at page 13:

“All defendants were, however, properly joined in the action in an attempt to discover which was liable for plaintiff’s claims; and since all denied and contested plaintiffs’ rights of recovery under the policy, none should recover costs.”

Under the authority of the foregoing case, this Court rules that those defendants absolved from the conspiracy by the jury’s verdict are not entitled to costs.

However, two conspiracies were alleged in the complaint—a conspiracy relative to first-run Los Angeles and a conspiracy relative to seven-day-run Inglewood-Westchester area. No attempt was made in the complaint to allege two, separate causes of action, and at the trial no attempt was made to segregate testimony relative to first-run Los Angeles and seven-day-run Inglewood-Westchester. In fact, [561] all witnesses testified indiscriminately as to the entire procedure concerning distribution in the areas involved, and it is not now possible to ascertain with exactitude how much time was spent by plaintiffs in attempting to establish a conspiracy first-run Los Angeles. Moving defendants contend that as a great portion of plaintiff’s case was devoted to the first-run Los Angeles conspiracy phase of the case defendants should not be

called upon to pay attorney fees and costs involved in attempting to establish such a conspiracy.

In several similar actions filed in this court plaintiffs have attempted to establish conspiracies first-run in Los Angeles. Invariably plaintiffs' attempts have been unsuccessful. (*Partmar v. Paramount*, 97 F. S. 552; 200 F. 2d 561, *Metropolitan Theatres Corp. v. Loew's Incorporated*, Southern District of California No. 13,115, and *Fanchon & Marco v. Paramount Pictures*, 100 F. S. 84; 215 F. 2d 167). Plaintiff and plaintiff's attorneys had knowledge of the unsuccessful attempts of prior litigants to establish a conspiracy first-run Los Angeles. It would seem unjust to require the moving defendants in this case to pay that portion of attorney fees and costs attributable to the first-run phase of the case. This Court is of the opinion that at least half of counsels' time and effort was used in attempting to establish a first-run conspiracy in Los Angeles.

In a prior case (*C. L. James v. Twentieth Century-Fox Film Corporation*, No. 12,976-HW)—in which the jury returned a verdict of \$1,000—this Court awarded attorney fees of \$15,000. The case at bar was longer in trial and was avidly contested. We are of the opinion that a reasonable fee for counsel would be the sum of \$20,000. [562]

In the *James* case, *supra*, the Court in its endeavor to ascertain a fair and just figure as attorney fees inquired of defendants' counsel their fees in the action; and in the case at bar the Court invited defense counsel to advise it of their charges

made to the individual defendants, as the Court felt a comparable allowance should be made to plaintiff's counsel. However, the Court has not been afforded the advantage of the requested information.

As attorney fees in this case the Court anticipated an allowance of \$20,000. Because of the time and effort given by plaintiff in attempting to establish the first-run Los Angeles conspiracy the Court is of the opinion the attorney fees and costs which ordinarily would be assessed should be divided in half.

Wherefore, It Is Ordered:

1. That plaintiff have judgment against defendants Twentieth Century-Fox Film Corporation, Fox West Coast Theatres Corporation and Loew's Incorporated in the sum of \$60,000;

2. That plaintiff have judgment in the amount of \$10,000 as reasonable attorney fees, plus one-half of the costs expended in this litigation.

Dated: September 24, 1956.

/s/ HARRY C. WESTOVER,

United States District Judge. [563]

[Endorsed]: Filed September 24, 1956.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: September 24, 1956. At: Los Angeles, Calif.

Present: Hon. Harry C. Westover, District Judge.

Deputy Clerk: Mary O. Smith. Reporter: None.

Counsel for Plaintiff: No appearance.

Counsel for Defendants: No appearance.

The motions of defendants Twentieth Century-Fox Film Corp., Fox West Coast Theatres and Loew's, Incorporated, filed August 31, 1956, for Judgment for Directed Verdict, having been heretofore heard and submitted, and the Court having duly considered the pleadings, record and briefs of counsel, and the law applicable,

It Is Ordered that the motions are denied, counsel for plaintiff to prepare formal order. Counsel notified.

The petition for attorney fees filed by plaintiff on August 31, 1956, having been submitted, the Court now hands down its Memorandum that plaintiff have judgment against the defendants Twentieth Century-Fox Film Corp., Fox West Coast Theatres and Loew's Incorporated in the amount of \$60,000.00, and further plaintiff have judgment in the amount of \$10,000.00 as reasonable attorney fees, plus one-half of the costs expended in the litigation. Fld Memorandum. Two copies of Memorandum given to Frank R. Johnston, Attorney for Twentieth Century-Fox. Mailed copy to counsel for plaintiff.

JOHN A. CHILDRESS,

Clerk. [564]

HW—9/24/56.

[Title of District Court and Cause.]

NOTICE OF REQUEST TO TAX COSTS

To Defendants Loew's, Inc., 20th Century Fox Film Corporation and Fox West Coast Theatres Corporation, and to their attorneys of record:

Please Take Notice that judgment having been entered in the above entitled action on the 24th day of September, 1956 against Loew's, Inc., 20th Century Fox Film Corporation, and Fox West Coast Theatres Corporation, the Clerk is requested to tax as costs one-half of the items set forth on the schedule of costs attached in accordance with said judgment. The undersigned will appear before the Clerk to tax said costs on October 1, 1956 at 11:00 a.m.

ELWOOD S. KENDRICK,
JOSEPH ALIOTO,
JACK CORINBLIT,
DAN HERSCHER,

/s/ By JACK CORINBLIT,

Attorneys for Plaintiff. [565]

AFFIDAVIT OF JACK CORINBLIT

State of California

County of Los Angeles—ss.

Jack Corinblit being duly sworn deposes and says:

That he does hereby swear that the foregoing costs set forth in the Schedule of Costs attached hereto are correct and were necessarily incurred in

this action, and that the services for which fees have been charged were actually and necessarily performed.

Further affiant sayeth not.

/s/ JACK CORINBLIT,
Affiant.

Subscribed and sworn to before me this 27th day of September, 1956.

[Seal] /s/ V. KLENZING,
Notary Public in and for said County and State.

SCHEDULE OF COSTS

1. To U. S. Clerk—Filing fee, \$15.00 (allowed).
2. To U. S. Marshal—Service of summons and complaint, \$12.00 (allowed).
3. Docket fee pursuant to 28 U.S.C.A., Section 1923, \$20.00 (allowed).
4. To Fred Quail, Court Reporter, for deposition taken by defendants: (a) Deposition of Alex Schreiber, copy, \$527.70; (b) Deposition of Max Schreiber, copy, \$152.85; (c) Deposition of Syd Lehman, copy, \$218.70; (d) Deposition of Marco Wolff, copy, \$68.55; [567] (e) Deposition of Harry Rackin, copy, \$7.80; (f) Deposition of Seymour Simon (Chicago, to Court Reporter Herbert Lawrence), copy, \$52.17. (Disallowed; custom of court not to allow copies.)
5. To Conlee - Wren & Bedall for depositions taken by plaintiff: (a) Al Taylor, George Hickey, Fred Greenberg, John Bertero, William Marriott,

Irving Epstein, Edwin Zabel, Morris Sudmin, Bert Pirosh, George Bowser. Total cost—original of each deposition, \$634.90 (allowed). One copy of each deposition (disallowed; custom of court not to allow copies).

6. Witnesses: (a) Spiro Skouras, witness fee for trial, mileage and service; (b) Richard Carnegie, witness fee for deposition and service; (c) Ralph Clark, witness fee for deposition and service; (d) Wayne Ball, witness fee for deposition and service. (Disallowed; non-attendance, Sec. 28, USC 1821). [568]

7. To Rapid Blue Print—Photos of documents introduced in evidence, \$20.00 (allowed; originals not used at request of defendants).

8. To Wilcox Photo Supply—Photostats of documents introduced in evidence, \$287.83 (allowed for reason above).

9. To Spence Photos—Photographs in evidence, \$6.00 (allowed as cost of 8x10 print; enlargement for convenience, not necessity).

10. To S. J. Trainer—For Reporter's transcript of trial July 9, 1956 through August 28, 1956—original and one copy, \$2,308.20 (allowed by stipulation).

11. To Spence Photos—Two photos in evidence, \$11.44 (allowed).

12. To Joseph Youtan, Accountant—Expert witness fee re testimony on damages (disallowed; contrary to custom of court to allow expert fees).

Total—\$3,315.37.

Costs are hereby taxed in the amount of \$1,657.69,

this 1st day of October, 1956, being one-half of the above taxed amount, and that amount included in the judgment.

/s/ JOHN A. CHILDRESS,
Clerk.

Present: Jack Corinblit, for plaintiff; Philip F. Westbrook, Jr., for certain defendants; Frank R. Johnston, for certain defendants. [569]

Adding machine tape attached.

Acknowledgment of Service attached. [570]

[Endorsed]: Filed September 27, 1956.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL; NOTICE OF SAID MOTION

Defendants Loew's Incorporated, Twentieth Century-Fox Film Corporation and Fox West Coast Theatres Corporation, and each of them, move the court, pursuant to Rule 59A of the Federal Rules of Civil Procedure, to vacate as to them the judgment entered herein on September 24, 1956, to set aside as to them the jury verdict received on August 28, 1956, and to grant to them [571] a new trial limited to issues relating to plaintiff's claim that during the period from September 18, 1950 to September 17, 1951 said defendants engaged in a conspiracy with each other to monopolize or unreasonably restrain interstate commerce in the licensing of motion pictures to plaintiff for exhibi-

tion in the Inglewood-Westchester area on an availability of 7 days after Los Angeles first run closing. Said motion is made upon the ground that said jury verdict was against the weight of the evidence with respect to said claim. Said motion is based upon all of the records, files and pleadings in this action and upon the memorandum in support of said motion served and filed concurrently herewith.

Dated October 4, 1956.

Respectfully submitted,

NEWLIN, TACKABURY &
JOHNSTON,

/s/ By FRANK R. JOHNSTON,

Attorneys for Defendants Twentieth Century-Fox
Film Corporation and Fox West Coast Thea-
tres Corporation.

O'MELVENY & MYERS,

/s/ By HOMER I. MITCHELL,

Attorneys for Defendant Loew's
Incorporated.

To Plaintiff and Its Attorneys of Record Herein:

Please Take Notice that the above motion will be brought on for hearing before the above entitled Court, in the Courtroom [572] of the Honorable Harry C. Westover, Judge, United States Post Office and Courthouse Building, Los Angeles, California, on Monday, October 15, at the hour of 10:00 o'clock a.m., or as soon thereafter as counsel may be heard.

Dated October 4, 1956.

NEWLIN, TACKABURY &
JOHNSTON,

/s/ By FRANK R. JOHNSTON,

Attorneys for Defendants Twentieth Century-Fox
Film Corporation and Fox West Coast Thea-
tres Corporation.

O'MELVENY & MYERS,

/s/ By HOMER I. MITCHELL,

Attorneys for Defendant Loew's
Incorporated. [573]

Affidavit of Service by Mail Attached. [574]

[Endorsed]: Filed October 4, 1956.

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION TO
RETAX COSTS

To Defendants Loew's, Inc., 20th Century Fox
Film Corporation and Fox West Coast Thea-
tres Corporation, and to their attorneys of
record:

Please Take Notice that on Monday, October 15,
1956, in the Courtroom of the Honorable Harry C.
Westover, Judge, of the United States District
Court, for the Southern District of California,
Southern Division, plaintiff will move the Court
for an order retaxing the costs allowed by the clerk
as follows:

1. Plaintiff will move for an order allowing the sum of \$1,027.77 for copies of depositions taken by defendants, which sum was disallowed by the Clerk.

2. For an order allowing the sum of \$181.40 for copies of depositions taken by plaintiff, which sum was disallowed by the Clerk.

3. For an order allowing the sum of \$500.00 for expert [608] witness fee of Joseph Youtan, which sum was disallowed by the Clerk.

Said motion will be based upon the Notice of Request to Tax Costs in all of the other files and papers in this action.

ELWOOD S. KENDRICK,
JOSEPH ALIOTO,
JACK CORINBLIT,
DAN HERSCHER,
/s/ By JACK CORINBLIT,

Attorneys for Plaintiff. [609]

[Endorsed]: Filed October 5, 1956.

[Title of District Court and Cause.]

ORDER DENYING MOTIONS OF DEFENDANTS LOEW'S, INC., 20TH CENTURY FOX FILM CORPORATION AND FOX WEST COAST THEATRES CORPORATION FOR A DIRECTED VERDICT AND ORDER DENYING THE MOTIONS OF SAID DEFENDANTS TO SET ASIDE VERDICT AND ENTER JUDGMENT IN ACCORDANCE WITH SAID MOTIONS FOR A DIRECTED VERDICT

Defendants 20th Century Fox Film Corporation, Fox West Coast Theatres Corporation and Loew's, Inc. having moved for a directed verdict; the court having taken said motions under submission; the jury having rendered its verdict for plaintiff and against said defendants; said defendants having moved the court to set aside the verdict of the jury and to enter a judgment in accordance with said defendants' motions for a directed verdict; the court having heard oral argument on said motions and having considered said oral argument, and the briefs submitted by plaintiff and said defendants with respect to said motions,

It Is Hereby Ordered, that each of said motions be, and they are hereby, denied. [610]

Dated this 8th day of October, 1956.

/s/ HARRY C. WESTOVER,
Judge. [611]

Disapproved as to form.

O'MELVENY & MYERS,
/s/ By P. F. WESTBROOK,
Attorneys for Loew's, Inc.

Disapproved as to form.

NEWLIN, TACKABURY &
JOHNSTON,
/s/ By FRANK R. JOHNSTON,
Attorneys for defendants 20th Century Fox Film
Corp. and Fox West Coast Theatres Corp.

[Endorsed]: Lodged September 27, 1956. Filed
October 8, 1956.

[Title of District Court and Cause.]

ORDER DENYING PLAINTIFF'S MOTION
TO RETAX COSTS

The plaintiff having filed its Notice to Tax Costs before the Clerk; the Clerk having allowed certain items as costs as requested by plaintiff, including the cost of original depositions taken by plaintiff, and having disallowed certain items; the plaintiff having moved the court for an order retaxing costs and the court having, on the 15th day of October, 1956, heard and considered the matter;

It Is Hereby Ordered as follows:

1. The sum of \$1,027.77 for copies of depositions taken by defendants is disallowed to plaintiff.
2. The sum of \$181.40 for copies of depositions taken by plaintiff is disallowed to plaintiff. [631]

3. The sum of \$500.00 for expert witness fee of Joseph Youtan is disallowed to plaintiff.

4. Plaintiff's said Motion to Retax Costs is denied in its entirety.

Dated: This 19th day of October, 1956.

/s/ HARRY C. WESTOVER,
Judge

Approved as to form.

ELWOOD S. KENDRICK,
JOSEPH ALIOTO,
JACK CORINBLIT,
DAN HERSCHER,

/s/ By JACK CORINBLIT,
Attorneys for Plaintiff. [632]

[Endorsed]: Filed October 19, 1956.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: October 19, 1956. At: Los Angeles, Calif.

Present: Hon. Harry C. Westover, District Judge; Deputy Clerk: Mary O. Smith; Reporter: None. Counsel for Plaintiff: No appearance. Counsel for Defendants: No appearance.

Proceedings: The motion of defendants 20th Century - Fox, Fox West Coast Theatres, and Loew's Inc., filed October 4, 1956, for new trial, having been heretofore heard and submitted, and the Court having duly considered the pleadings and the law

applicable, and being fully advised in the premises now hands down its Ruling on Motion for New Trial and orders same filed, and in accordance therewith orders said motion for new trial denied.

Filed Ruling. Mailed copies to counsel.

JOHN A. CHILDRESS,
Clerk. [633]

[Title of District Court and Cause.]

RULING ON MOTION FOR NEW TRIAL

After the jury had returned its verdict in favor of plaintiffs in this action defendants against whom the verdict was rendered made a motion for judgment notwithstanding the verdict. Upon hearing the motion, the Court held there was evidence in the record from which the jury could conclude that a conspiracy existed.

After judgment had been entered, the same defendants made a motion for new trial. Upon this motion they now urge it is necessary that the Court consider the weight of the evidence and that it is not sufficient to find there is evidence in the record from which a jury could have [634] concluded a conspiracy existed.

The leading case in this Circuit seems to be *Southern Pacific Co. v. Guthrie*, 186 F. 2d 926, in which the Court states that the verdict is to be set aside and a new trial granted when the trial court "is of the opinion the verdict is against the weight

of evidence." In a footnote, the Court sets out the rule as follows:

"On such a motion it is the duty of the judge to set aside the verdict and grant a new trial, if he is of opinion that the verdict is against the clear weight of the evidence, or is based upon evidence which is false, or will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict. * * *"

In a Supplemental Memorandum in support of the motion for a new trial, the moving defendants cite as authority the case of *Garrison v. United States*, 62 F. 2d 41, in which the Court says:

"* * * Verdict may be set aside and new trial granted, when the verdict is contrary to the clear weight of the evidence, or whenever in the exercise of a sound discretion the trial judge thinks this action necessary to prevent a miscarriage of justice."

We are of the opinion that the verdict rendered in this case is not contrary to the clear weight of evidence, and it is not necessary to set aside the verdict in order to prevent a miscarriage of justice.

Motion for new trial denied.

Dated: October 19, 1956.

/s/ HARRY C. WESTOVER,
United States District Judge. [635]

[Endorsed]: Filed October 19, 1956.

[Title of District Court and Cause.]

STIPULATION AND ORDER FOR DIS-
MISSAL OF CLAIM FOR EQUITABLE
RELIEF

It Is Hereby Stipulated by and between plaintiff
and defendants herein, by and through their re-
spective attorneys of record, that plaintiff's claim
for equitable relief be and it hereby is dismissed.

Dated: October 15, 1956.

ELWOOD S. KENDRICK,
JOSEPH ALIOTO,
JACK CORINBLIT,
DAN HERSCHER,

/s/ By JACK CORINBLIT,

Attorneys for Plaintiff. [636]

O'MELVENY & MYERS,
HOMER I. MITCHELL,
PHILIP F. WESTBROOK, JR.,
CHARLES G. BAKALY, JR.

/s/ By HOMER I. MITCHELL,

Attorneys for Defendants, Warner Bros. Pictures
Inc., Warner Bros. Pictures Distributing Cor-
poration, Paramount Pictures Inc., Paramount
Film Distributing Corporation, Loew's Incor-
porated, Universal Pictures Company, Inc.,
Universal Film Exchanges, Inc.

NEWLIN, TACKABURY &
JOHNSTON,
FRANK R. JOHNSTON,

/s/ By FRANK R. JOHNSTON,
Attorneys for Defendants Twentieth Century-Fox
Film Corporation, National Theatres Corpora-
tion, Fox West Coast Theatres Corporation.

It Is So Ordered, this 19th day of October, 1956.

/s/ HARRY C. WESTOVER,
Judge. [637]

[Endorsed]: Docketed, Entered and Filed Octo-
ber 19, 1956.

[Title of District Court and Cause.]

ORDER DENYING DEFENDANTS' MOTION FOR NEW TRIAL

Defendants Twentieth Century-Fox Film Corpo-
ration, Fox West Coast Theatres Corporation, and
Loew's, Inc., having moved the Court, jointly and
severally, for a new trial herein upon the ground
that the verdict of the jury was contrary to the
weight of the evidence; plaintiff having appeared
in opposition to said motion and the parties having
filed memoranda pertaining thereto; the Court hav-
ing heard oral argument, having considered [638]
the memoranda and oral argument, and having
weighed the evidence submitted in the case; and
the Court having found that the verdict rendered
in this case is not contrary to the clear weight of
the evidence and that it is not necessary to set
aside the verdict in order to prevent a miscarriage
of justice;

It is hereby ordered that said motion of said defendants be and it hereby is denied.

Dated this 24th day of October, 1956.

/s/ HARRY C. WESTOVER,
Judge. [639]

Affidavit of Service by Mail Attached. [640]
[Endorsed]: Filed October 24, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that defendants Fox West Coast Theatres Corporation, Twentieth Century-Fox Film Corporation and Loew's Incorporated and each of them hereby appeal to the United States Court of Appeals for the Ninth Circuit from the [641] final judgment entered in this action on September 24, 1956, in favor of plaintiff and against said defendants.

Dated: October 29, 1956.

NEWLIN, TACKABURY &
JOHNSTON,

/s/ By FRANK R. JOHNSTON,
Attorneys for Defendants, Twentieth Century-Fox Film Corporation and Fox West Coast Theatres Corporation.

O'MELVENY & MYERS,
/s/ By HOMER I. MITCHELL,
Attorneys for Defendant Loew's
Incorporated. [642]

[Endorsed]: Filed October 29, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that plaintiff Paradise Theatre Building Corporation hereby appeals to the United States Court of Appeals for the Ninth Circuit those parts of the final judgment entered in this action on September 24, 1956 which awarded to plaintiff from defendants Loews Incorporated, Twentieth Century Fox Film Corporation and Fox West Coast Theatres Corporation the sum of \$10,000.00 as reasonable attorneys' fees and the sum of \$1657.69 as costs.

Dated: November 23, 1956.

JACK CORINBLIT,
ELWOOD KENDRICK,
JOSEPH ALIOTO,

/s/ By JACK CORINBLIT [645]

[Endorsed]: Filed November 23, 1956.

[Title of District Court and Cause.]

STIPULATION AND ORDER EXTENDING TIME WITHIN WHICH TO DOCKET RECORD ON APPEAL

Whereas, there was filed a Notice of Appeal by the defendants Fox West Coast Theatres Corporation, Twentieth Century-Fox Film Corporation and Loew's Incorporated on October 29, 1956, and

Whereas, the Clerk of the Court has indicated that said record will not be ready for docketing

within 40 days from the date of the filing of the Notice of Appeal. [649]

Now, Therefore, It Is Stipulated by and between the parties, through their respective counsel, as follows:

1. That the time within which the Record on Appeal shall be filed and docketed with the United States Court of Appeals for the Ninth Circuit shall be extended to January 25, 1957.

NEWLIN, TACKABURY &
JOHNSTON,

/s/ By FRANK R. JOHNSTON,
Attorneys for Defendants Twentieth Century-Fox
Film Corporation and Fox West Coast Thea-
tres Corporation.

O'MELVENY & MYERS,
/s/ By HOMER I. MITCHELL,
Attorneys for Defendant Loew's
Incorporated

ELWOOD S. KENDRICK,
JOSEPH ALIOTO,
JACK CORINBLIT,
DAN HERSCHER,
/s/ By JACK CORINBLIT,
Attorneys for Plaintiff

It Is So Ordered this 4th day of December, 1956.

/s/ HARRY C. WESTOVER,
Judge. [650]

[Endorsed]: Filed December 4, 1956.

[Title of District Court and Cause.]

STIPULATION AND ORDER RE RECORD
ON APPEAL AND TRANSMITTAL OF
ORIGINAL EXHIBITS

Whereas, defendants Fox West Coast Theatres Corporation, Twentieth Century-Fox Film Corporation and Loew's Incorporated have heretofore filed their notice of appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on September 24, 1956, in favor of plaintiff and against said defendants, and have heretofore filed their designation of contents of the record on appeal, [651] designating the complete record and all the proceedings and evidence in the above entitled action, including the reporter's transcript of the evidence and proceedings therein,

And Whereas, plaintiff has heretofore filed its notice of appeal from so much of said judgment as awards the sum of \$10,000.00 as reasonable attorneys' fees and the sum of \$1,657.69 for costs,

It Is Hereby Stipulated, by and between plaintiff and said defendants, by and through their respective attorneys of record, as follows:

1. For the purposes of said appeals, the following shall constitute the complete record and all the proceedings and evidence in the action within the provisions of Rule 75(d) of the Federal Rules of Civil Procedure:

(a) The entire reporter's transcript, consisting of pages 1 to 3880 inclusive.

(b) All exhibits received in evidence.

(c) Plaintiff's Exhibits 32 A-1, 32 A-2, 32 A-3, 32 A-4, 32 B, 33 A, 33 B, 33 C, 35 A, 44 A, 44 B, 44 C, 44 D, 44 E, 44 F, 44 G, 44 H, 44 I, 44 J, 44 K-1, 44 K-2, 44 K-3, 44 L, 44 M, 44 N-1, 44 N-2, 44 N-3, 44 N-4, 44 N-5, 44 N-6, 44 N-7, 44 O-1, 44 O-2, 44 O-3, 44 P-1, 44 P-2, 44 P-3, 44 Q-1, 44 Q-2, 44 Q-3, and 44 Q-4 marked for identification only.

(d) The documents listed in Exhibit A, attached hereto and made a part hereof.

2. The originals of all documents, including exhibits [652] shall be transmitted by the Clerk to said Court of Appeals, in lieu of copies thereof.

Dated: This 2nd day of January, 1957.

ELWOOD S. KENDRICK,
JOSEPH ALIOTO,
JACK CORINBLIT,
DAN HERSCHER,

/s/ By JACK CORINBLIT,
Attorneys for Plaintiff

NEWLIN, TACKABURY &
JOHNSTON,

/s/ By HUDSON B. COX,
Attorneys for Defendants Twentieth Century-Fox
Film Corporation and Fox West Coast Thea-
tres Corporation.

O'MELVENY & MYERS,
/s/ By HOMER I. MITCHELL,
Attorneys for Defendant Loew's
Incorporated

It Is So Ordered this 2nd day of January, 1957.

/s/ HARRY C. WESTOVER,

Judge [653]

Exhibit A Attached—List of Documents.

[Endorsed]: Filed January 2, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 661, inclusive, contain the original:

Affidavit in Support of plaintiff's petition for attorneys' fees;

Answer of Fox West Coast Theatres Corp., et al., to the First Amended Complaint;

Answer of Loew's Inc.;

Answer of Paramount Pictures, Inc., et al.;

Answer of Universal Pictures Co., Inc., et al.;

Defendants' Notice of Appeal;

Defendants' Designation of Contents of Record on Appeal;

Plaintiff's Notice of Appeal;

Stipulation and Order Res Supersedeas Bond;

Stipulation and Order Extending Time Within Which to Docket Record on Appeal;

Stipulation and Order re record on and Transmittal of Original Exhibits on Appeal;

Complaint;

First Amended Complaint;

Motion to Retax Costs;

Order Denying Motion to Retax Costs;

Defendants' proposed form of Interrogatories to Jury and of Verdict Under Rule 49(b);

Interrogatories Nos. 1 and 2;

Judgment;

Defendants' Additional and Revised Jury Instructions;

Defendants' Proposed Jury Instructions;

Defendants' Additional, Proposed Revised and Supplemental Instructions;

Plaintiff's Proposed Instruction No. 37-C;

Plaintiff's proposed, modified and supplemental instructions;

Plaintiff's proposed instructions;

Plaintiff's proposed, additional and substituted instructions;

Plaintiff's proposed supplemental instructions;

Plaintiff's memorandum re instructions;

Plaintiff's Instruction No. 2-A;

Three Notes from Jury;

One Note from Jury;

Defendants' objections to Instructions;

Plaintiff's objections to Instructions;

Objections to Defendants' Proposed Instructions Nos. 12 and 48;

Plaintiff's objections to Designated Instructions;

Memorandum of the Court filed 9/24/56;

Memorandum of Law by defendant Loew's Inc.;

Memorandum support motion by defendants 20th Century Fox et al.;

Memorandum respect to Motion for Directed Verdict;

Memorandum re offer and Treatment of U. S. v. Paramount;

Memorandum in opposition to plaintiff's proposal to introduce testimony;

Memorandum re relationship between United Artists Theatre Circuit and Joseph Schenck and the case at bar;

Memorandum in opposition to motion to strike from plaintiff's opening statement;

Motion for more definite statement;

Motion to set aside Verdict of Jury;

Motion to set aside verdict and enter judgment;

Names and addresses of attorneys;

Memorandum in support of motion for new trial;

Motion for new trial;

Order denying motion for new trial;

Ruling on motion for new trial;

Supplemental memorandum in support of motion of new trial;

Notice to tax costs;

Offer of proof and memoranda of law by plaintiffs re admissibility of evidence;

Objections to plaintiff's proposed opening statement;

Plaintiff's proposed opening statement;

Defendants 20th Century Fox et al. proposed opening statement;

Defendants Warner Bros. Proposed Opening Statement;

Order denying motions of Defendants Loew's Inc., et al. for a Directed Verdict, etc.

Petition re Award of Attorneys' Fees;

Defendants' Pretrial Memorandum of Law;

Stipulation and order for dismissal of claim for equitable relief;

Stipulation and order putting motion off calendar;

Verdict;

and a full, true and correct copy of the Minutes of the Court on July 9, 1956; August 23, 1956; August 24, 1956; August 27, 1956; August 28, 1956; August 31, 1956; September 24, 1956; October 15, 1956; and October 19, 1956;

which, together with all of the Original of both Plaintiff and Defendants' Exhibits both admitted in evidence and marked for identification only, and thirty (30) volumes of Reporter's Transcripts, of proceedings had on *Kime* 8, 1956; July 9, 1956; July 10, 1956; July 11, 1956; July 12, 1956; July 13, 1956; July 17, 1956; July 18, 1956; July 19, 1956; July 20, 1956; July 24, 1956; July 25, 1956; July 26, 1956; July 27, 1956; July 31, 1956; August 1, 1956; August 2, 1956; August 3, 1956; August 7, 1956; August 8, 1956; August 9, 1956; August 10, 1956; August 14, 1956; August 15, 1956; August 16, 1956; August 17, 1956; August 21, 1956; August 22, 1956; August 23, 1956; August 23, 24, 27, 28, 1956; August 31, 1956;

constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in said cause.

I further certify that my fees for preparing the

foregoing record amount to \$2.40, which sum has been paid by appellants.

Witness my hand and the seal of said District Court, this 24th day of January, 1957.

[Seal] JOHN A. CHILDRESS,

Clerk

/s/ EDWARD F. DREW,

Chief Deputy

In the United States District Court, Southern
District of California, Central Division

No. 13476-HW Civil

PARADISE THEATRE BUILDING CORPO-
RATION, Plaintiff,

vs.

FOX WEST COAST THEATRES CORPORA-
TION, et al., Defendants.

REPORTERS' TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California
Wednesday, July 11, 1956

Honorable Harry C. Westover, Judge Presiding.

Appearances: For the Plaintiff: Jack Corinblit,
Esq., and Dan Herscher, Esq., 250 North Hope
Street, Los Angeles, California.

For the Defendants Warner Bros. Pictures, Inc.,
Warner Bros. Pictures Distributing Corporation,

Paramount Pictures, Inc., Paramount Film Distributing Corporation, Loew's Incorporated, Universal Pictures Company, and Universal Film Exchanges, Inc.: O'Melveny & Myers, by Homer I. Mitchell, Esq., Philip F. Westbrook, Jr., Esq., Charles G. Bakaly, Jr., Esq.

For the Defendants Twentieth Century-Fox Film Corporation, National Theatres Corporation, and Fox West Coast Theatres Corporation: Newlin, Tackabury & Johnston, by Frank R. Johnston, Esq., and David Massey, Esq.

* * * * *

Mr. Mitchell: Now, the plaintiff makes a great point of an arrangement between the exhibitors in the area prior to the opening of the Paradise Theatre. [144]*

There was an arrangement, apparently, between the exhibitors in the area prior to the opening of the Paradise whereby La Tijera, Bill Cupper's theatre, licensed Warners and RKO products.

The United Artist Theatre in downtown Inglewood licensed Loew's.

The Academy Theatre licensed Paramount products.

There may have been other arrangements there, but at least we know about those.

This arrangement, the evidence will show, was terminated at the request of Bill Cupper long before the Paradise ever came into being, namely, in April 1950.

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

So far as the arrangement itself is concerned, exhibitors, like distributors, have a right to select the people with whom they will deal. The distributors have a right to select their customers.

The exhibitors have a right to select their customers.

Bullock's selects Hickey-Freeman clothes for men. Nobody else sells Hickey-Freeman clothes in Los Angeles. If you want a Hickey-Freeman suit you have to go to Bullock's to buy it.

Harris & Frank sells Society Brand clothes.

Desmond's sells Kuppenheimer and Silverwood's sells Hart, Schaffner & Marx.

There is nothing unusual about one company selling the [145] product of a particular manufacturer nor is there anything unusual about the arrangement which these exhibitors made whereby the Warner pictures were played in the La Tijera and Imperial Theatres and the United Artist Theatre played Loew's and Academy played Paramount.

The only thing that the Paradise could complain of—the only thing Paradise did complain of, or does complain of, is that they were squeezed out. The evidence will show it was not squeezed out.

This arrangement had terminated long before the Paradise came into being.

At the time Paradise came into being there was then and had been for many months vigorous bidding in the area and we will show you that invitations to bid were sent to all these theatres; that numerous of them made and we will show you how the pictures were awarded. There will be no uni-

formity of awarding of Warner pictures to La Tijera, Loew's, to United Artist. There was vigorous bidding resulting in pictures going first here and going there.

Paradise couldn't have been hurt by it for two reasons. In the first place there wasn't any arrangement in existence at the time the Paradise opened and in the second place, if it had been in existence all the Paradise had to do was offer a higher bid and the picture would have been there.

So, actually such an arrangement couldn't operate except [146] by agreement of all the interested theatres.

Since the Paradise came in and wanted to bid they were given the opportunity. They had the same opportunity as any other theatre in the area.

Their real trouble was that they, unfortunately, they built before the area was ready for their theatre. * * * * * [147]

Now, there are a number of red herrings counsel tries to drag into this case which really have nothing to do with it. I have already told you about the arrangement in Inglewood for the dividing up and the arrangement among the exhibitors for the dividing up of the right to play product, which arrangement, right or wrong, we don't have to decide that now, was not even in existence when the Paradise was in operation and hadn't been in existence for many months prior thereto.

He brings up some negotiations with Mr. Joseph Schenck. Mr. Schenck was one of the operators of the United Artists Theatre Circuit. This negotia-

tion took place long prior to the construction of the Paradise Theatre, long prior to the period covered by the allegations of the complaint, and you may hear nothing more of it. It has nothing to do with the licensing of pictures. It doesn't involve Paramount, Loew's, Warner or Universal in any way.

Another subject matter which plaintiff will like to talk about is the transfer of the United Artists Theatre Circuit operation by Fox West Coast to operation by United Artists Theatre Circuit at the end of 1949 or early 1950. That has nothing to do with Warner, Paramount, Loew's or Universal. It has nothing to do with this case at all, and perhaps you will hear no more about that. [153]

* * * * *

EDWIN F. ZABEL

called as a witness by the plaintiff under Rule 43(b) of the Federal Rules of Civil Procedure, having been first duly sworn, was examined and testified as follows:

The Clerk: You may be seated. Please state your name.

The Witness: Edwin F. Zabel.

The Clerk: How do you spell your last name?

The Witness: Z-a-b-e-l.

Direct Examination

Q. (By Mr. Corinblit): Mr. Zabel, by whom are you employed?

A. By Fox West Coast Agency Co., Inc.

Q. That company is a wholly-owned subsidiary

(Testimony of Edwin F. Zabel.)

of the defendant Fox West Coast Theatres Corporation, is that correct? A. Yes.

Q. How long have you been employed by that company? A. Approximately 30 years.

Q. Did you perform services over the last 30 years for that company as well as for Fox West Coast Theatres Corporation, the defendant?

A. I happened to be employed by that particular company at the present time, but Fox West Coast or National Theatres, one or the other are subsidiaries. [168]

Q. Will you speak up a little bit so the jury can hear you, please?

A. I was employed, we say Fox West Coast Theatres. It may cover different corporations. I have been employed by several different corporations, subsidiary corporations of that company.

Q. You were employed by the defendant National Theatres Corporation for many years, were you not? A. Yes, sir.

Q. That covered a period of time, let us say, from 1935 to 1951? A. Approximately, yes.

Q. You were also employed by the wholly-owned subsidiary of that company, National Theatres Amusement Company, Inc., is that right?

A. Yes.

Q. Will you tell the jury, please, what your duties were with respect to these corporations and their theatre interests in 1949, 1950 and 1951?

A. In 1949 and 1951 I was employed as head

(Testimony of Edwin F. Zabel.)

of the buying department, film buying department, of Fox West Coast Theatres.

Q. What did you do for National Theatres Amusement Company, Inc.?

A. Well, at times I would—if they had some problems, [169] I would try to help them out, work for some of them, for National Theatres. [170]

Q. Now, National Theatres Amusement Company, Inc., is the company that was responsible for doing the buying or advising on the buying for the National Theatre chain, is that right?

A. Yes.

Q. And Fox West Coast Theatre Agency is the company that operated the theatres for Fox West Coast Theatres on the Pacific Coast generally, is that right?

A. Yes.

Mr. Corinblit: May I have Exhibit 31-J-1 and 31-J-2?

(Document handed to Mr. Corinblit.)

Q. (By Mr. Corinblit): I will show you a document which has been marked——

Mr. Johnston: May we look at them for just one moment, please?

Mr. Corinblit: Yes.

(Document handed to Mr. Johnston.)

Mr. Johnston: Thank you.

Q. (By Mr. Corinblit): I will show you, Mr. Zabel, Plaintiff's Exhibit 31-J.

The Court: For identification.

Q. (By Mr. Corinblit): For identification. And ask you if you are familiar with—if you have seen

(Testimony of Edwin F. Zabel.)

these documents before? There are several documents stapled together so you might examine all of them. [171]

A. I think I have seen them.

Q. You recognize them to be the agreements between Fox West Coast Agency Corporation and National Agency Corporation pursuant to which National Theatre Amusement Company, Inc., performed services for the local Pacific Coast chain of Fox West Coast Theatres.

A. Performed services for all the subsidiaries.

Q. Including the local chain? A. Yes.

Mr. Corinblit: We will offer in evidence Plaintiff's Exhibit 31-J.

Mr. Johnston: Your Honor, I am going to object to these documents on the ground they are incompetent, irrelevant and immaterial, relating to a time period, as the court will see—I think one of the documents is dated 1935 and one 1938 and one 1944.

The Court: Well, supposing they had had an agreement in 1935 relative to buying and that agreement continued over until 1950.

Mr. Johnston: I don't know that it did, your Honor.

The Court: We have to start somewhere. You can't put in the whole case at one time.

Mr. Johnston: I appreciate that, but we could start in 1900. We have got to stop at some place.

The Court: Objection overruled. Received in evidence. [172]

(Testimony of Edwin F. Zabel.)

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 31-J-1.)

The Court: I think I might advise the jury at this time, that we have a number of defendants in this case. There is Warners, Paramount, Fox West Coast and Fox.

During the examination of some of these witnesses the probabilities are that an exception will be made, for instance by Paramount, relative to certain testimony offered concerning Fox.

The court will probably admit the evidence as to Fox and not admit it as to Paramount, so it is going to be necessary for you to keep in mind these various legal entities.

This witness is an employee of Fox. His statements may be binding as to Fox, but may not be binding as to Paramount unless Paramount participated in the conversations or participated in the dealings in some way.

So, you must remember that as far as this witness is concerned he is only speaking for Fox. There has been no testimony so far connecting him with any other of the defendants.

Mr. Mitchell: You mentioned the fact there might be an objection. As I understand it from the proceedings had prior to the calling of the jury it is understood that a general objection made by the various counsel as to any matters involving the defendants other than those — for instance, with [173] respect to Mr. Zabel's statements as to Fox

(Testimony of Edwin F. Zabel.)

West Coast, they are not admissible against Paramount, Loew's, Universal, or Warners.

The Court: That is true, Mr. Mitchell, but I think we ought to get it into this record.

Mr. Mitchell: Yes.

The Court: We should get it into the record so somebody reading the record hereafter will understand that that was the agreement.

Mr. Mitchell: That is why I am stating it at this time. The objection runs to all statements that do not involve my client.

The Court: I might say to the jury that we have a rule in law known as the hearsay rule. That is, nobody is bound by any conversation unless he participates in that conversation or unless he was present where he could overhear it.

So, if there was a conversation taking place between A and B, C is not bound by it unless C was present or participated or could hear it. Consequently, you must remember that these conversations that will be testified to will only be binding upon those who participated in them or who was close enough to have heard what was going on.

Also, there is an understanding between counsel and court that testimony not binding upon those who were not present and who were not a part of the transaction will not [174] be binding on those who did not participate.

Mr. Corinblit: That is unless it is tied into them later on.

The Court: I may raise the bar at some place

(Testimony of Edwin F. Zabel.)

in this case and tell you that this testimony is admissible as to all defendants. [175]

* * * * *

The Court: You have used the terms buying and booking. I think we better get a definition. I understand the term and you understand and so does counsel. I doubt if the jury ever heard of these terms before, buying and booking.

Will you explain to the jury what you mean by buying and booking and what is the difference?

The Witness: Buying and booking are words we use in the licensing of motion pictures. At times we just have what we call the buyers. They make the deal for the pictures, and the bookers put the dates into the theatre.

But today buying and booking is practically the same thing. Everybody buys and books, because if you buy a picture at a time, and it is too much work for one group to [178] do it, and then put it into the theatre. It is rather a complex proposition and a little hard work, but that is the cause.

When you license a picture for a theatre from a distributor, you almost book it at the same time today, or at least within a short time.

Years ago they used to buy pictures by the year and then book them at a later date, but today things have changed and during the period we are talking about they had changed to where you may have to bid for a picture and you don't know whether you are going to get it or not until the last minute sometimes. So today you practically

(Testimony of Edwin F. Zabel.)

buy and book at the same time, and that is exactly what it is, licensing a picture and allocating it to the theatre you buy it for.

The Court: By booking you mean putting the picture into the particular theatre.

The Witness: Yes, sir.

The Court: You book it.

The Witness: Yes, sir.

The Court: You place it into the particular theatre.

The Witness: Yes, sir.

The Court: All right.

Q. (By Mr. Corinblit): Mr. Zabel, I will show you Plaintiff's Exhibit 31-E for identification, and ask you if that document reflects the list of theatres for which you were [179] responsible for buying in 1950.

A. I was the head of the department that were buying for this—what we call the booking and buying department.

Q. These were the theatres, in part, at least, for which you were responsible?

A. According to this list, I imagine they were, because it is evidently a copy—I don't know whether we had all of these theatres at that time or not, but I would say substantially that we perhaps did.

Mr. Corinblit: We will offer Plaintiff's Exhibit 31-E in evidence, your Honor.

Mr. Johnston: Your Honor, I am going to object to this as being a document that is totally im-

(Testimony of Edwin F. Zabel.)

material as now constituted. It includes theatres in many other areas than the area we are now concerned with.

The Court: Will you stipulate how many theatres were in the Fox West Coast chain? You can stipulate as to that, can't you?

Mr. Johnston: I think we can, but I say it is immaterial how many theatres were in the Fox West Coast chain.

The Court: I think they want to establish that the Fox West Coast chain was a big chain.

Mr. Johnston: I will stipulate to that. I will stipulate it was large and operated many theatres.

The Court: What do you mean by many? 200 or 300? [180]

Mr. Johnston: I think, subject to correction by Mr. John Bertero or some other witness, perhaps in the Southern California area there were at this time, I would say roughly around 150 theatres.

The Court: In Southern California?

Mr. Johnston: That's right.

The Court: How many were in Los Angeles and in the Los Angeles area?

Mr. Johnston: I would rather have a witness testify to that.

The Court: Here is the list here.

Mr. Johnston: This is the list of theatres in San Francisco, San Luis Obispo, and other places. I take it that that has no part of our deliberations.

The Court: I am willing to agree it has no part here except to show the number of theatres.

(Testimony of Edwin F. Zabel.)

Mr. Johnston: I will take the list and count them. I will be very happy to do that.

The Court: All right. I will sustain the objection provided you will get together and prepare a statement showing the number of theatres.

Mr. Johnston: In what area, sir?

The Court: In the Fox West Coast chain, the number, and the number in the metropolitan area.

Mr. Johnston: The Los Angeles metropolitan area? [181]

The Court: Los Angeles metropolitan area.

Mr. Johnston: We will be glad to do that.

Q. (By Mr. Corinblit): Mr. Zabel, in addition to the theatres on the list I showed you, I think you testified you were responsible for the department, and the contracts that went in referred to the department that covered the entire National Theatres chain. This was part of the National Theatres chain.

Can you give me roughly how many theatres you were responsible for in total?

Mr. Johnston: Your Honor, I again say that that is immaterial.

The Court: Overruled.

The Witness: I was not responsible for all the theatres in the chain, in the National Theatres chain in that department.

The Court: The question is how many were you responsible for.

The Witness: This is 1950?

Mr. Corinblit: Yes.

(Testimony of Edwin F. Zabel.)

The Court: Approximately.

The Witness: Approximately 225.

Q. (By Mr. Corinblit): Mr. Zabel, you were employed by National Theatres Amusement Company at that time, is that right? [182]

A. I don't know for sure. I was changed from National Theatres Amusement Company to Fox West Coast Agency some time around that period.

Q. But when you were employed by National Theatres Amusement Company, Inc., you acted as an advisor to all the subsidiaries throughout the country, is that right?

A. As an advisor, yes.

Q. I want to know when you acted in that capacity as advisor, what was the total number, approximately, of theatres?

A. I would say around 550.

Q. Among the theatres that you supervised in 1949, 1950 and 1951, in the Los Angeles territory, are some that I want you to identify, if you will.

In the Los Angeles area, looking first to the first run theatres in the city of Los Angeles——

Mr. Westbrook: Counsel, are you going to use the blackboard?

Mr. Corinblit: Yes.

Mr. Westbrook: You are?

Mr. Corinblit: In a moment.

Mr. Westbrook: Will you move it back so we can see?

Mr. Corinblit: Surely.

Q. You supervised the purchase of pictures on

(Testimony of Edwin F. Zabel.)

first run for the Grauman's Chinese Theatre on Hollywood Boulevard, is [183] that correct?

A. Yes.

Q. And in 1949, the Egyptian Theatre on Hollywood Boulevard, is that right?

A. I don't remember what year.

Q. 1949, prior to November?

A. I don't know. At one time we did supervise the Egyptian Theatre.

Q. The Vogue Theatre on Hollywood Boulevard?

A. Yes.

Q. The Iris Theatre on Hollywood Boulevard?

A. Yes. This is 1949?

Q. Yes. The Guild Theatre on Hollywood Boulevard?

Mr. Mitchell: You Honor, I will object to the questions on the basis of 1949. That is prior to the time there was any Paradise Theatre, and it is prior to the time covered by the complaint. The complaint alleges a conspiracy between September 17, 1950, and September 17, 1951. Who owned the theatres in 1949 is immaterial.

The Court: Overruled.

Q. (By Mr. Corinblit): The Guild Theatre on Hollywood Boulevard?

A. I don't know whether the Guild was operated in 1949 or not. It was a television theatre for a while.

Q. When it was open, you supervised it? [184]

A. Yes.

Q. Now, on first run you supervised in 1949 the

(Testimony of Edwin F. Zabel.)

purchase for the Fox first run theatre at the Loew's State, is that right, in 1949?

A. I don't know. It was some time. I don't remember the date.

Q. Prior to that date?

A. Yes, prior to that date.

Q. And for the Los Angeles Theatre downtown, is that right? A. Yes.

Q. Now, turning for a moment to the Wilshire Boulevard area, you supervised the purchase of pictures for the Wilshire Theatre?

A. Fox Wilshire?

Q. Yes. A. Yes.

Q. And the El Rey Theatre? A. Yes.

Q. And the Ritz Theatre? A. Yes.

Q. And the Four Star prior to its turn back?

A. Prior to United Artists taking it.

Q. Is that correct, the Four Star?

A. Yes. [185]

Q. And also the Uptown Theatre, is that correct? A. Yes.

Q. Now, during that same period in a supervisory capacity, you purchased pictures for the Studio Theatre in Studio City? A. Yes, sir.

Q. Also for the Culver Theatre in Culver City?

A. Yes.

Q. And also for the Loyola Theatre in Westchester? A. Yes.

Q. Now, those were generally the first run theatres which you supervised.

In the Inglewood-Westchester area in 1949 you

(Testimony of Edwin F. Zabel.)

supervised the purchase of film for the Academy Theatre, is that right? A. Yes.

Q. The Fifth Avenue Theatre? A. Yes.

Q. At that time the United Artists Theatre?

A. I don't know whether we were running the United Artists at that time or not.

Q. Prior to the turn back.

A. Prior to the turn back.

Q. The Fox Inglewood or the Inglewood Theatre? A. Yes. [186]

Q. The theatre called the Fox Crest?

Mr. Westbrook: Counsel, there is an error on the theatre map. The Fox Inglewood is the Fox Crest on the map and the Inglewood is the Inglewood Theatre.

Q. (By Mr. Corinblit): You supervised both theatres?

A. I don't think there was a Crest in Inglewood.

Q. Mr. Westbrook has corrected it. There were two theatres, one the Fox Inglewood and the other the Inglewood.

A. That's right, Fox Inglewood.

Q. Did you supervise both theatres?

A. Yes.

Q. Then you mentioned the Loyola Theatre.

In carrying out your duties of supervising the purchase of film for these first run theatres, it was your job to make arrangements with the film companies to obtain film product on first run, is that right?

(Testimony of Edwin F. Zabel.)

A. Either my job on some subordinates working for me.

Q. But under you? A. Yes.

The Court: May I ask a question here?

Mr. Corinblit: Yes.

The Court: During this period, 1949, 1950 and 1951, did you have a policy of multiple first run theatres in the Fox chain in Los Angeles?

The Witness: Yes, I believe we did. [187]

The Court: All the first-run theatres were on a par with them regardless of locations.

The Witness: That is they were on——

The Court: They were on a par, for instance the theatres out in Westwood, were on a par with downtown.

The Witness: No, no, we do not have a first-run theatre in Westwood.

The Court: If you had a first-run theatre in Inglewood was it on a par with the first-run theatre in downtown Los Angeles?

The Witness: No, the Inglewood theatres ran after the first-run theatre downtown.

The Court: Well, I thought you said these were all first-run theatres.

The Witness: I didn't understand that. I said that——

Mr. Johnston: The witness didn't say that, your Honor. I think Mr. Corinblit tried to infer that, but that isn't the fact at all.

Mr. Corinblit: No, sir, no.

(Testimony of Edwin F. Zabel.)

The Court: All the question was, did you supervise these theatres?

Mr. Johnston: That is right.

The Court: I thought you were talking about first run.

Mr. Corinblit: Other than the theatres that we mentioned, other than the Academy, the Fifth Avenue, United Artist, [188] Inglewood Fox, Inglewood. The theatres other than that group in Inglewood were Los Angeles first-run theatres, isn't that right? Those that I enumerated.

The Witness: I have forgotten the list of them now.

Q. (By Mr. Corinblit): Well, you remember the theatres in Hollywood. They were included—Loew's State, Egyptian, the Vogue, the Iris and the Guild, those were first-run theatres.

A. I don't remember the Guild as being a first-run theatre at that time or not. At one time it was.

Q. With that exception at one time it was.

A. Those theatres were first run, played first-run pictures.

Q. Now, downtown the Loew's State and the Los Angeles, is that true?

A. I believe at that time they were first run.

Q. And Wilshire Boulevard, the Wilshire Theatre, the Ritz, the Four Star, the El Rey.

A. The El Rey I don't believe was a first run at any time. The other three were first run.

Q. Part of the time it was first run.

A. I believe so, hit and miss, yes.

(Testimony of Edwin F. Zabel.)

Q. And the Uptown Theatre.

A. I believe Uptown was first run at that time.

Q. And the Studio Theatre in Studio City. [189]

A. Only—well, it was first run for a period of time. I don't remember whether it covered that time or not.

Q. And the Culver Theatre in Culver City.

A. It was a first run for a short period of time.

Q. Do you remember what that period of time was? A. No, I don't.

Q. As much as five years?

A. I don't recall. I wouldn't want to state.

Q. And then of course the Loyola Theatre which was first run from 1946 on.

A. I believe from the time that it opened.

Q. Now, the other theatres that I mentioned, the Academy, the Fifth Avenue, United Artist Inglewood, Inglewood Fox—in the Inglewood area, they were not first run Los Angeles, were they?

A. I don't recall playing any first-run pictures in those theatres.

The Court: I want to go back to my question about first-run pictures. Were they on a par with each other regardless of location? Were they on a par?

The Witness: The same picture played in some of the theatres, yes.

The Court: And the Loyola Theatre was on a par with the other first-run theatres?

The Witness: I don't understand what you mean by "par." [190]

(Testimony of Edwin F. Zabel.)

The Court: As far as getting first-run pictures was concerned.

The Witness: Yes. The same picture played in that that played in the other.

The Court: Did you play the same picture in all these first-run theatres simultaneously?

The Witness: No, only in a number of them.

The Court: But you considered the Loyola Theatre as a good first run theatre.

(No answer.)

The Court: That is as far as playing the picture was concerned, not revenue, but playing the picture was concerned.

The Witness: The physical setup of the theatre was very good, yes.

The Court: Well, these pictures were on a par—you didn't try to distinguish between first class and second class first-run theatres, did you?

The Witness: No.

The Court: They were all on a par.

The Witness: They were first-run theatres, yes. [191]

* * * * *

Direct Examination—(Continued)

Q. (By Mr. Corinblit): Mr. Zabel, before the recess you had enumerated the Fox first run theatres and the court had asked you some questions about them.

Now, I think we should get in the record at this time, and I think we might do that from an exhibit here, the seating capacities of the Fox theatres

(Testimony of Edwin F. Zabel.)

that we are talking about, and perhaps you can give them to me approximately, if you want to, and if you know them yourself, fine, in 1949.

Mr. Johnston: Your Honor, if it will save time, we will be perfectly willing to stipulate to those figures in respect [193] to the theatres in the Los Angeles area, if that will serve any purpose.

Mr. Corinblit: All right.

The Court: All right.

Mr. Johnston: I will step up there with the witness, if you wish.

The Court: You can stipulate, then, to the seating capacities of the theatres?

Mr. Johnston: I might say that Mr. Zabel has started to mark off here the Fox theatres in the Los Angeles metropolitan area, and the job has not been completed. Maybe with his help we can complete it right now. We want to check our Fox operations as they were at this time.

Is that correct, Mr. Zabel.

The Witness: Yes.

Q. (By Mr. Corinblit): Let's start with the first run theatres. I think we can start with the Chinese Theatre. It is 2,048 seats. Let me stop for a moment. I am sorry. I don't think I had you point out the Carthay Circle Theatre. That was a first run theatre, too, at that time, wasn't it, 1949?

A. I don't believe it was. The Carthay Circle had been closed a couple of years except for stage shows.

Q. You don't believe it was first run in 1949?

(Testimony of Edwin F. Zabel.)

A. No. [194]

Q. Could we have the Loyola seating capacity?

Mr. Johnston: It is right there.

Mr. Corinblit: 1,234 seats.

The Chinese is 2,048 seats.

The Egyptian Theatre in Los Angeles—that is not on this list. We will have to get that separately.

The Vogue Theatre in Los Angeles, or in Hollywood, 897 seats.

The Iris Theatre, 814 seats.

The Guild Theatre, 965 seats.

The Los Angeles Theatre downtown, 2097 seats.

The Loew's State Theatre downtown is not on this list. We will get that separately.

The Uptown Theatre, 1,715 seats.

The Ritz Theatre, 1,363 seats.

The El Rey Theatre, 860 seats.

The Four Star Theatre is not on this list.

The Wilshire Theatre, 2,296 seats.

The Studio City Theatre, 880 seats.

The Culver Theatre, 1,145 seats.

Q. Have we covered all of them, then, other than the Egyptian and the Loew's State?

A. I believe so.

Mr. Johnston: I will stipulate, your Honor, that those are the seating capacities of the houses and theatres [195] mentioned as of August 1, 1950. I did not know that the El Rey was included among the theatres which Mr. Zabel testified as to being first run theatres, but in any event that is the seating capacity of the El Rey Theatre as read off. [196]

* * * * *

(Testimony of Edwin F. Zabel.)

The Court: Let me ask this witness as an expert with 30 years' experience in the industry, what do you mean by "substantial competition" or "reasonable competition"? What is your definition?

The Witness: Any theatre that draws from a like area, they are in competition.

The Court: Would you say the Paramount Theatre in downtown Los Angeles is in competition with a theatre in Watts?

The Witness: Yes, it could be if it is running first run and some people from Watts are downtown they will go to the theatre.

The Court: Would you say there is substantial competition with Inglewood?

The Witness: Yes.

The Court: In other words, substantial competition, as I understand it, is a substantial number of people coming from Inglewood to *go a* downtown theatre, is that right?

The Witness: That is my opinion, yes.

The Court: Well, as far as Inglewood is concerned, what is the area of substantial competition relative to Inglewood? You are acquainted with the geography of that area, are you not? [200]

The Witness: Yes. We have taken tests—in fact, by taking the license numbers of automobiles at the various theatres we were able to tell where the people came from and they come from all directions, all over Los Angeles and to the different places.

The Court: Even Hollywood?

(Testimony of Edwin F. Zabel.)

The Witness: Yes.

The Court: From all over Los Angeles?

The Witness: Yes. They drive from one place to another.

The Court: Why would they drive from Hollywood to Inglewood if they can see the same picture in Hollywood?

The Witness: I don't know, but they do. In checking on the license plates they come from all the metropolitan area. That has been our experience.

The Court: Isn't it true that as far as Fox is concerned in its neighborhood theatres, it depends on the people in that neighborhood for its patronage?

The Witness: I just had an experience last week. We received a letter from a patron in the Inglewood Theatre and he had his address on the envelope from Culver City. The same picture was playing in Culver City that was playing in Inglewood.

The Court: What is the area or realm of competition, substantial competition in the Fox Theatre at Inglewood?

The Witness: I imagine most of the competition is in [201] the Inglewood area—Inglewood and the adjoining area.

The Court: Would you say that they would get any substantial patronage outside of that area?

The Witness: From our experience we have had patronage from outside the area.

(Testimony of Edwin F. Zabel.)

The Court: You have some, but have you had substantial patronage?

The Witness: I don't know how substantial it was because we didn't count them that way, but they do come. I can imagine most of the competition is in the immediate area.

The Court: All right, Mr. Corinblit.

Mr. Corinblit: Just a moment, if your Honor please.

The Court: While you are thinking of a question, I have thought of another one.

Mr. Corinblit: All right.

The Court: When you talk about substantial competition, are you giving any consideration at all to the ease of traffic—that is the ability to get from one place to another?

The Witness: Yes. Some of the boulevards are easier to travel on for longer distances than some of the streets for a shorter distance.

The Court: Isn't it true that this question of substantial competition in the last, say from '51 on, has been controlled a great deal by the ability to park an automobile—that is the parking problem?

The Witness: That is one and the other is accessibility.

A good example is the Hollywood Boulevard theatres. Hollywood Boulevard was in bad condition for a while businesswise, but the freeway came through and business on Hollywood Boulevard picked up, especially the theatres. It is the hottest spot, I would say, in the Los Angeles area—Holly-

(Testimony of Edwin F. Zabel.)

wood Boulevard, and that is because of the free-way, the accessibility of automobiles to Hollywood.

The Court: Now, in this particular area we are talking about there is the Baldwin Hills down there.

The Witness: Yes.

The Court: It is to the north, a little bit to the north and maybe a little west of Inglewood.

Would the Baldwin Hills have any effect upon the question of substantial competition from people north of Baldwin Hills?

The Witness: Toward the city.

The Court: Toward Hollywood, Beverly Hills.

The Witness: Yes. Baldwin Hills would cause—it is very accessible and I believe the proof of the matter is that Baldwin Hills does an excellent business.

The Court: I am not talking about the theatre there at Baldwin Hills. I am talking about the geography and not the theatre.

The Witness: I see.

The Court: Would the Baldwin Hills preclude the people [203] north of the hills from coming down to the Inglewood Theatre?

The Witness: No.

The Court: They could go around them?

The Witness: They could go right through it. Quite a few streets run right through.

The Court: So the hills wouldn't have anything to do with the question of ability to compete?

The Witness: Not today, no.

(Testimony of Edwin F. Zabel.)

The Court: You may proceed.

Q. (By Mr. Corinblit): Mr. Zabel, just to go on with this line of testimony, do you have an opinion—did you have an opinion in 1950 and '51 whether the Paradise Theatre and the Academy Theatre were in substantial competition?

A. Did I have an opinion?

Q. Yes, do you have an opinion?

A. I don't remember whether I had an opinion or not. They are pretty accessible to each other.

Q. Well, my question is, did you in 1950 and 1951 have an opinion one way or the other?

A. Yes, they were in competition.

Q. They were in competition?

A. Yes, I think they are in competition.

Q. Did you have an opinion in 1950 and 1951 that they were?

First, did you have an opinion about that subject in 1950 and 1951?

A. No, I didn't have too much to do with it in 1950 and 1951.

Q. You didn't have any opinion on the subject at that time?

A. Not necessarily, no, sir.

The Court: Will you stipulate the distance between the two theatres? It doesn't mean anything to the jury unless they know how far they are apart.

Mr. Corinblit: Yes, we will get the distance. I think that we will have those.

(Testimony of Edwin F. Zabel.)

Mr. Mitchell: I mentioned yesterday it was 4.4 miles.

Mr. Corinblit: Subject to correction, we will accept that stipulation.

Q. And you didn't have an opinion in 1950 and 1951 whether the Academy and the Paradise were in substantial [205] competition, being 4.4 miles away, did you?

A. I don't know what you mean by an opinion. I think they were in competition.

Q. In 1950 and 1951, my point is, you were the buyer, and my question is, did you have an opinion or not?

A. I don't remember discussing it, but I would say if I had thought of it, I would have the same opinion, they are in competition.

Mr. Corinblit: I move to strike the answer, your Honor, as not responsive.

The Court: It may go out.

Mr. Corinblit: The question is, did you have an opinion in 1950 and 1951?

The Court: You can answer that yes or no.

The Witness: I don't remember whether I had one or not, but if I was thinking of it, I would have had the opinion.

The Court: He says no.

Q. (By Mr. Corinblit): Now, Mr. Zabel, to carry that a step further, was it your opinion that the Chinese Theatre in Hollywood was in substantial competition with the Paradise Theatre in 1950 and 1951?

(Testimony of Edwin F. Zabel.)

A. I would say that it was in competition.

Q. Was that substantial?

A. Substantial competition.

The Court: What is the difference? What is the [206] distance?

Mr. Corinblit: If my recollection is correct, I am sorry I don't have that distance at hand, but——

Mr. Westbrook: What theatres?

Mr. Corinblit: The Chinese and the Paradise.

Mr. Westbrook: Your Honor, we are working up a stipulation on all these distances and we will have it within the next day or so.

The Court: All right: You can bring it in later.

Q. (By Mr. Corinblit): You recall that the Chinese Theatre and the Loyola Theatre in Westchester played simultaneously with each other.

A. Yes.

Q. But it is your testimony that they were in substantial competition?

A. I still think they are in competition.

Q. Of course, it would be your testimony that the Uptown and the downtown theatre of Fox playing first run were in substantial competition?

A. I think so.

Q. And they played simultaneously with each other? A. Yes.

Q. It is your testimony that the Chinese Theatre in Hollywood was in substantial competition with the Loew's State Theatre or the Los Angeles Theatre downtown? [207] A. Yes.

Q. And they played day and date simultaneously

(Testimony of Edwin F. Zabel.)

with each other, is that right? A. Yes.

Q. Now, it is also your testimony that when the Wilshire Theatre played first run, it was in substantial competition with the theatre on Hollywood Boulevard, is that right?

A. The Wilshire Theatre? You mean playing the same picture?

Q. Yes.

A. I don't think they ever played the same picture.

Q. You don't believe they ever played the same picture? A. No.

Q. Therefore, you don't have an opinion one way or the other on that, is that it?

A. If they played the same picture, they would be in substantial competition.

Q. All right. It is true, is it not, that for many years in the city of Los Angeles theatres on first run which were in substantial competition with each other under your definition have played simultaneously with each other, is that right?

The Court: Mr. Corinblit, I think possibly you are [208] misstating the problem. I think he can say the Fox theatres were in substantial competition, but you included all theatres.

Mr. Corinblit: Yes, sir. You are correct.

The Court: Let's eliminate everybody except Fox. This is a Fox witness.

Mr. Corinblit: Thank you for the correction, your Honor.

Q. Referring only to the Fox theatres, it is true

(Testimony of Edwin F. Zabel.)

for many years in this city, theatres, first run theatres in substantial competition with each other played simultaneously with each other.

A. Some played with each other and some played individually.

Q. But in playing with each other, that has gone back for many years in the past, at least since 1934?

A. Well, it varied as to the number of theatres that played together over the period of years.

Q. But at least it began in 1934?

A. I don't remember when it began. It began quite a while ago.

Q. You remember it was in existence in 1934?

A. I don't remember whether it was 1934 when it started but the condition was in existence.

Q. It was also true that, turning for a minute on this matter of substantial competition to theatres in the area of [209] Los Angeles playing on availability of 21 days after first run, they played on that availability although they were in substantial competition with each other?

The Court: That is the Fox theatres?

Mr. Corinblit: The Fox theatres, yes, the Fox theatres.

The Witness: In my opinion, actually the subsequent run theatres are not as much in competition with each other in the various areas as are the first run theatres.

Q. (By Mr. Corinblit): What is the area gen-

(Testimony of Edwin F. Zabel.)

erally as far as the Fox theatres are concerned in which theatres are in substantial competition?

Mr. Johnston: Your Honor, I fail to see what the 21 day theatres in Los Angeles have to do with the issues in this case. I think we are putting things into this case which have no place in it when we start talking about 21 days.

The Court: Are you making an objection?

Mr. Johnston: I do make an objection.

The Court: Overruled.

Q. (By Mr. Corinblit): Will you answer the question, Mr. Zabel?

A. You are referring to our 21 day theatres. I think they are considered more of a neighborhood theatre and they cater more to the neighborhoods in that run than they would be on the first run theatres. [210]

Q. Wasn't the official position of Fox that theatres on 21 days within five miles of each other were in substantial competition?

A. I don't know. I never set any mileage. It depended on the locality.

Q. Do you have an opinion as to the mileage within which Fox theatres on 21 days were in substantial competition with each other?

A. No. I couldn't say. I would say on accessibility.

The Court: May I ask the witness a question?

Mr. Corinblit: Yes.

The Court: You have used another term. You

(Testimony of Edwin F. Zabel.)

say neighborhood theatres. Did you consider the Loyola Theatre a neighborhood theatre?

The Witness: Personally, I did.

The Court: It is a first run theatre, too?

The Witness: Yes.

The Court: So you had first run theatres and neighborhood theatres in this situation.

The Witness: I happened to be against putting first run pictures in there.

The Court: But the fact of the matter is that it is a neighborhood theatre.

The Witness: Yes.

The Court: And a first run theatre. [211]

The Witness: Yes.

Q. (By Mr. Corinblit): To take an example, Mr. Zabel, I don't want to push this too far, but you know the Loma Theatre in Santa Monica, don't you? A. The Loma?

Q. Yes. A. Yes.

Q. That theatre played simultaneously day and date for a period with the Egyptian on Hollywood Boulevard, didn't it? A. I don't believe so.

Mr. Mitchell: When?

Mr. Corinblit: Before 1943, before the Egyptian——

Mr. Mitchell: When did you say?

Mr. Corinblit: Before 1943, when the Egyptian went first run.

Mr. Mitchell: Your Honor, aren't we going a long, long way back to refer to the entire play-off? I object to it as being too remote.

(Testimony of Edwin F. Zabel.)

Mr. Corinblit: I will withdraw the question and ask a question pertaining to a later period on this point.

Q. The Loma Theatre played day and date with a Fox theatre on Hollywood Boulevard in 1950, didn't it, 21 days?

Mr. Johnston: When?

Mr. Corinblit: 1950.

The Witness: I don't recall that. If they did, it [212] would be a matter of record, but I don't recall it.

Q. (By Mr. Corinblit): You don't recall it?

A. No.

Q. Do you recall theatres within this area, however, that I have outlined, which covers from Hollywood Boulevard down to Wilshire Boulevard, down to Vermont, do you recall that there were Fox theatres in that area playing simultaneously with each other?

Mr. Mitchell: Now, when is this?

Mr. Corinblit: In 1950, on the 21 day run.

The Witness: Down Vermont up to Hollywood?

Q. (By Mr. Corinblit): Yes.

A. Yes, there were theatres playing day and date.

Q. Simultaneously with each other?

A. Yes.

Q. Was it your opinion that those day and date theatres were in substantial competition with each other?

Mr. Johnston: On the 21 day run?

(Testimony of Edwin F. Zabel.)

Mr. Corinblit: Yes.

The Witness: No.

Q. (By Mr. Corinblit): Have you ever discussed this matter——

The Court: Just a minute. Do I understand you are making a difference in your definition of substantial competition according to runs? [213]

The Witness: Yes, I am making a difference between substantial competition, between the runs of theatres.

The Court: In other words, you would say that it would be in substantial competition on first run, but not in substantial competition on third run, or 21 day run?

The Witness: That is correct.

Q. (By Mr. Corinblit): Now, Mr. Zabel, could you give the jury your definition of the word substantial as part of that definition of substantial competition as you have stated the term?

A. Well, I would say that if one area draws quite a number of people from the other area, it is in substantial competition.

Q. What do you mean by quite a number?

A. I don't know. I haven't any idea.

Q. I beg your pardon?

A. I said that——

The Court: Let me ask the witness a question.

The Witness: Yes.

The Court: Suppose you have a theatre with 1,000 capacity. You fill that theatre, have a thou-

(Testimony of Edwin F. Zabel.)

sand people in it. How much of that thousand would you consider substantial? 100? 50?

What is substantial?

The Witness: I don't know whether I could peg it. [214] I would say if quite a lot of people come there, that would be substantial competition.

The Court: You know, quite a number doesn't mean anything to this jury. I might consider three quite a number.

The Witness: It would be pretty hard to make a guess at what you would call it. I would say if it has 15 or 20 per cent, it would be substantial competition.

The Court: 15 or 20 per cent?

The Witness: Yes.

Q. (By Mr. Corinblit): Now, then, applying that as between two theatres, taking the court's question, a theatre of 1,000 people, 15 or 20 per cent being substantial competition, is it your testimony that the Chinese Theatre drew 15 or 20 per cent in 1949, 1950 and 1951 from the Westchester district?

A. I have never checked it, but I do know if the Chinese Theatre runs King and I, the only theatre in town, it does a lot of business and runs a long time, where a picture that is run in four or five theatres does not run as long and does not do the business.

Q. My question to you, Mr. Zabel, is in 1949, 1950 or 1951, was it your opinion or is it your opinion now as to those periods, that the Chinese on

(Testimony of Edwin F. Zabel.)

Hollywood drew 15 or 20 per cent of its business from the Westchester district?

A. I don't know.

Q. You don't know? [215] A. No.

Q. Do you have an opinion whether they drew 5 per cent from the Westchester district?

A. I don't know. They played to quite a few people. They come from all over the metropolitan area.

Q. Do you have an opinion whether they drew 5 per cent? A. No, not any percentage.

Q. Any percentage, not even one per cent?

A. No.

Q. Was it your opinion that a theatre playing downtown would draw 15 or 20 per cent on first run from the Westchester district?

A. I don't know. All I know is that the theatre will—one theatre runs in the metropolitan area, and it does a great deal more business and runs a longer time than if four or five theatres would run the picture at the same time. Whether they drew from the Inglewood district, Westchester, or the Valley, I don't know. They draw from all areas. What the percentage is, I don't know. That was just a guess.

Q. Just a guess?

A. What I would say substantial competition is.

Q. Earlier, a few minutes ago, I think, if I understood you correctly, you testified that it was your opinion that substantial competition, that there was substantial competition between the Chinese

(Testimony of Edwin F. Zabel.)

Theatre on Hollywood Boulevard and [216] the Paradise Theatre in Westchester.

The Court: That is on first run.

Q. (By Mr. Corinblit): On first run.

A. On first run.

Q. And then in answer to the court's question, I believe you stated that your definition of substantial competition would be 15 or 20 per cent.

A. Not on first run. I believe the court asked me if there are two areas together what I considered substantial competition.

Q. Now, on first run, what do you mean by substantial competition, what percentage?

A. I don't know what the percentage would be, but I do know a first run theatre, the Chinese Theatre, for example, advertising The King and I, it advertises all over the metropolitan area, and they do do a lot of business that way. I do know when they play in four or five theatres, none of the theatres do as much business. It is split between them.

The Court: You mean all the four or five theatres don't do as much business as the one theatre?

The Witness: That has been proven. That is right.

The Court: That is the testimony?

The Witness: Yes.

The Court: You don't get as much business out of [217] five theatres as you do out of one?

The Witness: That is true.

Q. (By Mr. Corinblit): And that would be true by the week, is that right?

(Testimony of Edwin F. Zabel.)

A. I didn't say by the week. By the run.

Q. In other words, you are comparing a run of perhaps 10 or 12 weeks in the Chinese, one theatre, with a run of one week in five theatres?

A. If the theatre does business, it runs longer than one week in five theatres.

Q. Comparing them by the week, is it your testimony that the theatre grosses more?

A. No, that is not my testimony.

Q. In other words, that would not be true at all?

A. No.

Q. The five theatres would gross a lot more than the one theatre for one week.

A. Not necessarily.

Q. What would be your general opinion on that?

A. Generally, for one week I would say it would gross more.

Q. In the five theatres than in the one.

A. For one week.

Q. For one week. A. Yes. [218]

Q. I don't want to labor on this question any more, but I just want to get clear, you have no idea in terms of percentage as to the percentage of people from Westchester that went to the Chinese Theatre on first run in 1950 and 1951.

A. I have never checked the figures. I don't know the percentage figure from each individual area.

Q. Do you have any idea in terms of number of people? A. No. [219]

Q. You didn't have in 1950 and 1951?

(Testimony of Edwin F. Zabel.)

A. No.

Q. You never discussed that with any distributor, did you, the number of people? A. No.

Q. Or the percentage of people?

A. Not that I know of.

Q. That never came up in your negotiations with the film company—that is, the numbers of people or percentage of people?

A. I don't know. I never had any reason for discussing that.

Q. Now, Mr. Zabel, with respect to Fox first-run theatres, do you remember in 1949 Fox was playing Fox theatres—Fox theatres were playing Los Angeles first run on Loew's pictures, is that right?

A. Fox theatres were playing Loew's pictures?

Q. Yes, in 1949?

A. I don't know whether it was in 1949 or not.

Q. You don't recall that? A. No.

Q. Do you recall whether they played them in 1950? A. No, I don't.

Q. In 1949?

A. What theatres are you talking about now?

Q. Well, any Fox theatres. I will be glad to—do you want to know what theatres I think they were playing in, Fox theatres?

A. You are talking about Fox Los Angeles and first run.

Q. Loew's product in Fox theatres on first run. Do you remember that they were playing regularly on first run in Fox houses? A. (No answer.)

(Testimony of Edwin F. Zabel.)

Q. Do you remember that?

A. They were at some time but I don't remember whether they played in 1949 or '50.

Mr. Mitchell: Can't we simplify the matter by agreeing when the United Artists Theatre Circuits were taken away from Fox and started operating by themselves, that being February 1950.

Mr. Corinblit: I think with Loew's State you will find it was an earlier date.

Mr. Mitchell: My understanding is it was February 1950, but what earlier date do you want to talk about so we can get an approximation?

Mr. Corinblit: We can get it from Mr. Bertero.

Mr. Johnston: November 1949 in regard to Loew's State.

Mr. Corinblit: And with regard to the Egyptian.

Mr. Johnston: If you put Mr. Bertero on the stand he can [221] answer all of those questions. Same date.

Mr. Mitchell: And other United Artists theatres apparently separated from Fox West Coast in February 1950—January 1, 1950.

Mr. Corinblit: Is that a stipulation?

Mr. Mitchell: I will agree to that.

Mr. Johnston: My understanding is the United Artists Theatre in Inglewood started operations as the United Artists Theatre Circuit in February 1950. I don't know the precise date. I will say early in 1950 with respect to that one theatre.

Q. (By Mr. Corinblit): Now, with that stipulation in mind, that it was November of 1949 that

(Testimony of Edwin F. Zabel.)

the Loew's State Theatre went back to United Artists Theatre Circuit, do you remember that in 1949, prior to that time, Loew's product was playing first run regularly in Fox Theatres?

A. It seems to me that Loew's State went back to Loew's some time—I don't remember when it was.

Q. Prior to that time?

A. We didn't have anything—we weren't operating Loew's State at that time.

I may be confused, but I believe that Loew's were operating and then United Artists, weren't they?

Mr. Johnston: That is correct. I will stipulate to that.

Mr. Corinblit: What is that? [222]

Mr. Johnston: Loew's operated Loew's State for a period of time and United Artists Theatre Circuit operated them thereafter.

Mr. Corinblit: We will have testimony on that. I don't know about that.

Q. Mr. Zabel, so we can get this clarified,—

I would like, your Honor, at this time, to offer into evidence the play-off of Loew's pictures in first-run theatres in the City of Los Angeles.

The Court: For what period of time?

Mr. Corinblit: I think I would like first to offer that play-off for the period beginning January 1, 1949, through September 1951.

We have a stipulation with counsel with respect to the authenticity and accuracy of the document

(Testimony of Edwin F. Zabel.)

subject, of course, to any corrections, and I would like to make that offer at this time.

Mr. Mitchell: Your Honor, no request was made by the Paradise Theatre for product until February 1950. It didn't open until August 1950.

How pictures played in 1949—pictures played in 1949 could not have effected Mr. Schreiber and his theatre at all and therefore——

The Court: That is true, but he wants to show what the general condition was in Los Angeles in 1949 just before the [223] Paradise Theatre opened.

Mr. Mitchell: I understand what they want to show. They want to inject 1949 and show the operation by different parties at a different time. If you take the date 1950 on you will have the operation and you won't confuse the jury as to who was operating the theatre.

You will find the theatres were operated during the year 1950 and during the year 1951 by the very same persons.

You don't have to confuse the jury by going back to 1949 which injects confusion which would have no effect on Mr. Schreiber because Mr. Schreiber wasn't even on the scene until 1950.

The Court: Mr. Corinblit, wouldn't it be satisfactory to start with January 1, 1950?

Mr. Corinblit: No, your Honor, and there is a reason for that.

The conditions under which the change was made from what happened in 1949 to what happened in 1950, which continued up through our period, is

(Testimony of Edwin F. Zabel.)

very important—that is, there will be testimony with respect to conversations and understandings that were entered into with Fox during the time that they had the first run that moved—that effected the switch in 1950, moving up into our period. Those conversations are very important and this is the background for those conversations. [224]

The Court: The objection is overruled.

Mr. Corinblit: These are now attached, and I will ask——

The Court: They will be received in evidence.

Mr. Corinblit: I will ask if you can do so, to number them 46A-1-A.

Mr. Westbrook: You included others in that list. If you are going to——

Mr. Corinblit: That is right.

Mr. Westbrook: Let us detach that now.

The Court: Now, the words “play-off” have been used here. What does it mean? I know what it means but the jury doesn’t.

The Witness: Play-off? What company’s product each theatre played during the period of time—the play-off of the picture. In other words they booked Metro pictures, Fox pictures—that is the play-off.

Juror: We can’t hear you.

The Witness: I am sorry. The play-off is the number—the company’s pictures—the number of pictures that were played in a certain theatre during a certain period of time.

(Testimony of Edwin F. Zabel.)

The Court: It is a record kept, is it not? It is a written record kept of the pictures played.

The Witness: Yes. Maybe you play one picture each week. We may play one picture two weeks during the period [225] of a year or you may play all the way from 30 to 50 pictures in that particular theatre from different companies or maybe the same company, but that is the number—that is the list of the play-off of the pictures—the performances of the picture in that particular theatre. That is what they call “play-off.”

The Court: Now, while we are defining terms, there is another term that has been used here. What do you mean by “top half” of the bill?

The Witness: Top half of the bill is a theatre where you play two pictures. Generally the top picture, the top half is the good picture, the better picture—box office picture. The lower half is what we call a second picture.

The Court: The lower half is the lower half.

The Witness: That is the second picture, generally the picture that you don't like.

The Clerk: Is this exhibit received in evidence?

The Court: Yes.

The Clerk: 46-A-4.

(Whereupon the exhibit referred to was marked Plaintiff's Exhibit 46-A-4, and received in evidence.)

Mr. Corinblit: The date of Exhibit 46-A-4 is the period from January 1, 1949, through September 25, 1951.

(Testimony of Edwin F. Zabel.)

Q. Mr. Zabel, I want to show you the play-off list, which has been admitted in evidence, of Loew's pictures on [226] first run in the year 1949.

You note that on the first page all of the pictures, with one exception at the Four Star, played at Los Angeles, Wilshire and Egyptian Theatres in that year 1949 up through—first let us go up through October, up through October, all of those three theatres belonged to Fox, is that correct? That is our stipulation, I believe, isn't that right, counsel—Los Angeles, Egyptian and Wilshire belonged to Fox through October 1949?

Mr. Johnston: Yes.

Mr. Mitchell: Fox operated them.

The Witness: Fox operated them.

Mr. Johnston: Fox operated them.

Q. (By Mr. Corinblit): Now, turning to 1950, substantially all of the pictures on the first sheet running from January '50 to June of '50 were played in the Loew's State and Egyptian Theatre, is that correct? A. Yes.

Mr. Mitchell: Can we have a stipulation that they were operated then by United Artists Theatre Circuit?

Mr. Corinblit: We will so stipulate.

Mr. Johnston: Subject to the qualification that Loew's operated, as I understand it, Loew's State Theatre some time after 1949 for a period of time.

Mr. Corinblit: I don't know the facts on that, counsel. [227] I would like to know in the interim. What happened and how long it lasted, but subject

(Testimony of Edwin F. Zabel.)

to that, yes, we can stipulate, but I will be glad to enter into that stipulation if I can see the facts on them. [228]

* * * * *

Mr. Corinblit: Mr. Zabel, first examining the period from January of 1950 to approximately June of 1950, it is true, is it not, that during that six months' period all of [229] Loew's pictures played in the Loew's State and Egyptian Theatres or in the Egyptian Theatre alone. Isn't that correct? Is that true from your examination—through June of 1950?

The Witness: I don't think we operated these theatres at that time.

Mr. Mitchell: I can't hear you.

The Witness: I don't think we operated Loew's State at that time.

The Court: You don't think it is a correct play-off?

The Witness: I don't know. That is what it says right here. Do you want me to answer what that says on here?

The Court: You stipulate this is a correct play-off, don't you?

Mr. Mitchell: That is right.

Mr. Johnston: To ask this witness what was played in the theatres after Fox West Coast ceased to operate them may be outside of his knowledge. The witness doesn't need any help in reading off the play-off record. We stipulated to its accuracy.

The Court: I might say to the witness if you

(Testimony of Edwin F. Zabel.)

don't know, just say so. If you don't know, say so. There is no disgrace by admitting you don't know. It will be a lot easier to say you don't know if you don't know.

The Witness: I don't know because we weren't operating the theatre as of this period of time, I don't believe. [230]

Mr. Corinblit: Mr. Zabel, is it correct—you are correct. He is referring to 1950. That is, Fox was not operating the Loew's State and Egyptian in 1950.

The Witness: That is right.

Q. (By Mr. Corinblit): But it did operate them for most of 1949? A. Yes, sir.

Q. Right? A. Yes, not Los Angeles.

Mr. Mitchell: We can't hear you, Mr. Zabel.

The Witness: Los Angeles—I don't think we operated the Loew's State in 1949 at all. I don't know. I imagine, subject to verification, but I don't believe we did.

Mr. Corinblit: We had a stipulation that Fox was operating the Loew's State until October or November of 1949, is that correct?

Mr. Johnston: That is the stipulation.

The Witness: I am sorry.

Q. (By Mr. Corinblit): All right. Mr. Zabel, were you present at any of the negotiations which led to the switch of Loew's product from the three Fox theatres that played them in 1949, to the Loew's State and Egyptian in 1950?

A. No. I may have been present, but I didn't

(Testimony of Edwin F. Zabel.)

handle the situation because I was in charge of the department and they were handled mostly by other people in my department. [231]

Q. You remember, do you not, Mr. Zabel, that in 1950 Fox did not, after the pictures had gone to the Loew's State and to the Egyptian Theatre during the first part of 1950, that Fox did not thereafter negotiate with Loew's for their pictures during that period? Do you remember that?

A. No.

Q. You don't remember that one way or the other? A. No.

Q. Do you remember—you certainly didn't bid for their pictures, did you?

A. No, we didn't.

Q. Now, isn't it a fact, Mr. Zabel, that just prior to 1950 Fox and Loew's and United Artist entered into an agreement whereby Loew's pictures would be moved from the three Fox theatres to the Egyptian and Loew's State and whereby Fox would not thereafter attempt to compete for Loew's pictures? A. No.

Mr. Mitchell: Wait a minute, your Honor. I object to the question on the ground it calls for a conclusion.

If they are going to prove such an agreement, and they won't be able to prove there was such an agreement, but if they are going to prove one, they have got to prove it either by a piece of paper or by what somebody said.

(Testimony of Edwin F. Zabel.)

To ask this man to speculate on or give his conclusion [232] is not a proper question.

The Court: This is cross examination.

Mr. Mitchell: I understand this is cross examination.

The Court: All he has to do is say no, if he doesn't know.

Mr. Mitchell: But he calls for a conclusion, your Honor, and I object to the form of the question.

He should be able to say what people said if he was there, and he couldn't have been, or he ought to be able to say what people wrote, but to ask him to conclude on the basis of some rumor or perhaps on the basis of nothing as to whether there was an agreement is an improper question.

The Court: Read the question.

(Question read by the reporter as follows:

"Q. Now, isn't it a fact, Mr. Zabel, that just prior to 1950 Fox and Loew's and United Artist entered into an agreement whereby Loew's pictures would be moved from the three Fox theatres to the Egyptian and Loew's State and whereby Fox would not thereafter attempt to compete for Loew's pictures?")

The Court: The objection is overruled. You can answer that question yes or no.

The Witness: I know of no such agreement.

Mr. Corinblit: How is that?

The Witness: I didn't participate in anything like that [233] and I don't know about it.

(Testimony of Edwin F. Zabel.)

Q. (By Mr. Corinblit): Mr. Zabel, do you know Mr. Pirosh? A. Yes.

Q. Who was Mr. Burt Pirosh? In what work was he engaged? What work did he do as far as you know, in 1949, in the latter part of 1949?

A. Burt Pirosh was a film buyer.

The Court: For whom?

The Witness: For Fox.

Q. (By Mr. Corinblit): And did Mr. Pirosh work under your supervision and direction?

A. Yes, sir.

Q. Isn't it a fact, Mr. Zabel, that Mr. Pirosh told you that he and the operators—that he and Mr. Pat DeCicco—let me stop there. You know Mr. Pat DeCicco? A. Yes, I know Mr. DeCicco.

Q. In 1949 who was Mr. Pat DeCicco?

A. Mr. Pat DeCicco was with the United Artist Theatre.

Q. And that was the company that took over the Loew's State and the Egyptian, is that right?

A. Yes.

Q. Now, isn't it a fact that Mr. Pirosh told you that he and Mr. DeCicco had had a meeting in the latter part of 1949, in which they had—in which Mr. DeCicco had stated [234] that he wanted to play Loew's product in all of the United Artist Theatres and that Mr. Pirosh had said he, on behalf of Fox, would agree and that thereafter Mr. Pirosh told you that both he and Mr. DeCicco discussed the matter with the representatives of Loew's

(Testimony of Edwin F. Zabel.)

Incorporated and Loew's Incorporated said they would agree to that arrangement?

A. No, he never told me that.

Q. Now, have you learned without regard to him telling you that, of that fact since that date?

A. No.

Q. Have you read the deposition of Mr. Pirosh in this case? A. No. [235]

* * * * *

Q. (By Mr. Corinblit): Now, Mr. Zabel, let me call your attention to the period in 1949 when Loew's pictures were playing regularly in the Fox Theatres. Now, it is true, is it not, Mr. Zabel, that in 1949 when Fox played Loew's pictures in the Los Angeles Theatre, no other theatre other than a Fox house played simultaneously on Loew's product with that Fox Theatre, is that correct?

A. I didn't get that question. [236]

Q. If a picture played first run in the Los Angeles Theatre downtown, no other theatre played simultaneously with the Los Angeles Theatre on that picture other than the Fox theatres?

A. This is what is true here. They are all Fox theatres, aren't they?

Q. That's right. That was true in 1949, was it not? A. Yes. [237]

* * * * *

Q. The question now, Mr. Zabel, is this: Isn't it true that as long as you remember in the city of Los Angeles, if a Fox theatre downtown played a picture on a first run, no other theatre in the city

(Testimony of Edwin F. Zabel.)

of Los Angeles played that picture simultaneously first run except a Fox theatre?

Mr. Mitchell: Now, wait a minute, your Honor. I object to the question on the ground it is too long in scope. We can't just try this case on the basis of as long as you remember and come in and try to refute things as long as Mr. Zabel may remember in his long experience. It is immaterial.

The Court: There is another question comes up in [238] my mind. Are you speaking of all first run pictures by all companies, or just Fox first run?

Mr. Corinblit: All first run pictures, your Honor.

The Court: All first run pictures?

Mr. Corinblit: Yes.

The Court: Metro, Paramount, Warner Bros.?

Mr. Corinblit: Yes, sir. If they played first run in a Fox theatre downtown, whenever this may have occurred, did it ever happen that any other theatre of any other ownership played simultaneously with them. That is the question.

The Court: I will restrict the question to 1949, 1950 and 1951.

The Witness: It is a pretty hard question to remember. I don't remember the play-off of all the pictures for those years. All I do know is right here. These Metro pictures played in the downtown, Wilshire and Hollywood areas only, according to this statement.

Q. (By Mr. Corinblit): Mr. Zabel, you remember, though, that Fox never, if it played a picture

(Testimony of Edwin F. Zabel.)

first run downtown, didn't play day and date with any theatre that belonged to anyone else in 1949? Don't you remember that?

A. No, I don't remember.

Q. You don't remember? A. No. [239]

* * * * *

Mr. Corinblit: I would like to offer at this time in evidence, your Honor, the Universal play-off from January 1, 1949, to September 18, 1951.

The Court: What is the number?

Mr. Corinblit: Exhibit 46-A-5. [241]

The Court: It may be admitted in evidence.

(The exhibit referred to was received in evidence and marked Plaintiff's Exhibit No. 46-A-5.)

The Court: That is January 1, 1949, to what in 1951?

Mr. Corinblit: September 18, 1951.

The Clerk: It says September 20.

Mr. Corinblit: All right, September 20.

The Court: September 20.

Q. (By Mr. Corinblit): Mr. Zabel, I will show you what has been admitted as Plaintiff's Exhibit 46-A-5, the play-off of Universal Pictures on first run in Los Angeles from January 1, 1949, to the end of September 1951. I ask you to examine that.

It is a fact, is it not, that Universal Pictures during this period played regularly in a group of four theatres which at this time were Fox theatres, and one theatre downtown, the United Artists Theatre, which was not a Fox theatre?

(Testimony of Edwin F. Zabel.)

A. It played the United Artists, the Ritz, the Guild, the Iris, and Studio, five theatres.

Q. Will you call those off again and I will point them out to the jury so they can see what we are talking about. They played the United Artists Theatre downtown, which is [242] here (indicating). What else? A. The Ritz.

Q. The Ritz, which is here (indicating).

A. The Guild.

Q. The Guild, here (indicating).

A. The Iris.

Q. The Iris, which is here (indicating).

A. And the Studio.

Q. And the Studio, here (indicating). Any other theatre?

A. That's all at that point, until later on some more played.

Q. What other theatres played later?

A. Culver.

Q. Right here (indicating). Any other theatres?

A. The El Rey is in here.

Q. And the El Rey, right here (indicating).

Mr. Zabel, the exhibit to which I have referred shows that this was true for 1949, 1950 and 1951.

Mr. Mitchell: Rather than have his recollection, won't you find that in 1950 and 1951 the Guild and the Iris no longer played first run, and instead the Vogue played first run Hollywood alone?

Mr. Corinblit: Yes.

Mr. Mitchell: Alone on Hollywood Boulevard, I mean. [243]

(Testimony of Edwin F. Zabel.)

Mr. Corinblit: Yes.

Mr. Mitchell: And the El Rey didn't play first run at all except one or two occasions.

Mr. Corinblit: I think that is correct, yes.

Q. Now, Mr. Zabel, when was the arrangement whereby Universal Pictures went into this group of theatres arrived at, to your knowledge?

A. Arrived at between William Scully and myself.

Q. And when?

A. I imagine a short time prior to January 1949.

Q. You say a short time prior?

A. I imagine it had to be prior or they couldn't play there.

Q. How long prior to January 1949?

A. I don't know. I imagine it was shortly prior.

Q. Within three months?

A. I don't know. I should think so.

Q. Do you know?

The Court: Will you keep your voice up, please?

The Witness: I have an idea. We made the agreement that it would go into effect as soon as possible.

Mr. Mitchell: I will stipulate it was 1946, which is the time we all knew it occurred.

Mr. Corinblit: Counsel, will Mr. Johnston on behalf of Fox stipulate to the same fact? [244]

Mr. Johnston: Yes.

Q. (By Mr. Corinblit): Mr. Zabel, your counsel here states that this agreement took place three years before 1949.

(Testimony of Edwin F. Zabel.)

A. It might be. You showed me the statement here and it said 1949. It perhaps did. I don't know. I remember when I made it. I know what deal I made, but I don't remember the date.

Q. In 1946, you say you had a conversation with Mr. Scully? A. Yes, if that is the date, yes.

Q. And Mr. Scully, who was he?

A. Mr. Scully at that time was in charge of distribution for Universal.

Q. And your position at that time was what?

A. Head of film buying department in Los Angeles.

Q. And you discussed with him this matter of getting first run pictures into this group of Fox houses, is that right?

A. No. Mr. Scully came to me and asked if he could have a number of houses to run his pictures in. His claim was that he didn't have proper representation for his pictures, and that the stars and the producers and everybody complained that they played in a few theatres where all the other distributors had more seating capacity, and he said he wanted [245] enough theatres to at least make up 6500 seats, as he felt that was a proper representation for their pictures and the producers and stars and directors would be satisfied with that number of seats, that they were getting proper release in Hollywood. By Hollywood, I mean the Los Angeles area.

Q. What did you say?

(Testimony of Edwin F. Zabel.)

A. We would try to satisfy him, and he picked the locations himself.

Q. You provided him with the theatres?

A. Yes.

Q. And he said, "I will put Universal Pictures in them"? A. Yes.

The Court: Mr. Corinblit, I don't know whether the jury can hear you or not. You are talking this way.

Mr. Corinblit: I better get back here.

The Court: It may be important testimony. If it is, the jury ought to hear it.

Mr. Corinblit: Did the jurors hear the answers the witness gave?

Q. From that time on, in 1946 through 1951, Universal pictures, Universal delivered their first run pictures to that group of theatres with some modification for five years, isn't that right?

A. Apparently. According to these dates, yes.

Q. That is correct, is it not? A. Yes.

The Court: Do I understand you got all the Universal pictures?

The Witness: I don't know. I would say substantially all. I am not sure that it is.

The Court: Substantially all?

The Witness: Yes.

Q. (By Mr. Corinblit): Mr. Zabel, when Mr. Scully told you at the end of this discussion that he would deliver Universal pictures to this unit of Fox theatres in 1946, did he tell you that before his discussion with you the president of his com-

(Testimony of Edwin F. Zabel.)

pany and the president of your company had already made such arrangements with an officer of RKO? Did he tell you that? A. No.

Q. Did he tell you that he had discussed with the persons having control of the RKO theatres the matter of transferring Universal from RKO to Fox, and that the person in control of RKO theatres had agreed Universal pictures should be moved out of the RKO theatres into the group of Fox theatres? A. No.

Q. Have you learned that fact since that time?

A. No. I don't know it is a fact.

Q. Have you discussed that matter with Mr. Bertero at [247] all? A. No.

Q. Who was Mr. Bertero in 1946?

A. Mr. Bertero was in charge of our legal department.

The Court: You say "our." You mean Fox?

The Witness: Fox legal department. Excuse me.

The Court: Is that Fox West Coast?

The Witness: Fox West Coast legal department.

Q. (By Mr. Corinblit): For each year thereafter to your knowledge Universal delivered their pictures to you without ever requesting any other theatre to compete for those pictures, isn't that correct?

A. I don't know whether they requested or not. They put the pictures in these particular theatres.

Q. And you never had to compete for them?

A. Not that I know of.

The Court: May I inquire, when you made this

(Testimony of Edwin F. Zabel.)

agreement, or when the agreement was made, what kind of financial arrangements were made? Were you to pay so much for the pictures? Were you to pay so much revenue according to the admissions?

The Witness: Yes. Most of the film deals or licensing was based upon percentage, and if it was a second picture, it was perhaps flat rental.

The Court: So these pictures were delivered upon a [248] percentage basis?

The Witness: Oh, yes.

The Court: Now, may I ask another question here to clarify something I think the jury ought to know.

You have been talking about bids, making a bid. When you make a bid, is the bid made usually upon a percentage or upon a flat basis?

The Witness: Well, when you are bidding for a picture, the distributor puts up a picture for bid for anybody that wants to buy it. Sometimes they stipulate terms on the picture, and again they just leave it open and the exhibitor, some of them bid flat, some of them bid percentage, and some of them bid a guaranteed flat against a percentage.

They generally stipulate in there how many days they are going to run or weeks, whatever it is.

The Court: Will you explain to the jury what you mean by a percentage of the picture?

The Witness: Percentage of the picture is a percentage of the gross of the theatre. Generally it varies from, oh, I would say from a minimum al-

(Testimony of Edwin F. Zabel.)

most of 15 per cent up to 70 per cent, and sometimes higher than that.

The Court: That is not gross.

The Witness: The gross of the theatre, gross income.

The Court: That is the admissions, gross admissions. [249]

The Witness: That's right, gross admissions at the box office.

The Court: It has nothing to do with popcorn or candy?

The Witness: No.

The Court: What do you mean by flat?

The Witness: Flat, they work out a deal where they pay a fixed amount of money for that picture for that week in a theatre, or a longer time, but they generally buy it for a one-week run, and if you run more than one week, it is so much more, generally at a pro rata basis. The percentage will take care of itself, because the box office gross each week determines what you pay. [250]

The Court: The Universal pictures you are now talking about over this five-year period——

The Witness: Yes, sir.

The Court: Came to you on a percentage basis.

The Witness: If they were top pictures, yes, but a second picture generally a flat deal was worked out.

The Court: Was a deal worked out for each individual picture?

The Witness: Yes, sir.

(Testimony of Edwin F. Zabel.)

The Court: That became available?

The Witness: Yes, sir.

The Court: Although you had the right to the picture nevertheless you had to negotiate to determine what you were going to pay for it?

The Witness: Yes, sir; you have to negotiate for every one of them.

The Court: Speak up.

The Witness: I don't want to confuse this. Some of these pictures at one time you negotiated for more than one picture at a time. You may have a set of terms on five pictures and then again maybe you set it for just one picture.

As I say you book it in to the theatre when you get the date in the theatre and just prior to that you negotiate the deal. [251]

The Court: Then as I understand during these five years, although you had all the the Universal pictures or practically all of them——

The Witness: Yes, sir.

The Court: —— nevertheless as these pictures became available you had to negotiate the terms for them?

The Witness: Yes, that is correct.

Q. (By Mr. Corinblit): There came a time, did there not, Mr. Zabel, when Fox no longer owned United Artists Theatre downtown, isn't that right?

A. That is true.

Q. And that went back to United Artists Theatre Circuit, Inc., isn't that right? A. Yes, sir.

Q. Despite that fact, during this five-year pe-

(Testimony of Edwin F. Zabel.)

riod all United Artists—Universal pictures continued to play downtown in the United Artists Theatre downtown? A. Yes, sir.

Q. Now, were you present at a meeting where that arrangement was made?

A. No, I don't believe I was. I don't recall that arrangement, but it was requested by Universal and it would be almost automatic if they could get together on terms.

Q. Were you present at a meeting between Mr. Skouras and the president of Universal and the representative of [252] United Artists Theatre in which it was agreed that United Artists products—that Universal products would continue to go to the United Artists Theatre with the four Fox theatres day and date? A. No.

Q. Did you ever learn of that agreement since that time? A. No, sir.

Q. Did you ever discuss that agreement with anyone at Fox? A. No.

Q. You know that there was an arrangement whereby that was true?

A. No, but I know they played in the theatre because Universal asked for it.

Q. Automatically every picture that came off played simultaneously with the United Artists Theatre downtown and the four Fox houses?

A. That was Universal's request.

Q. And that is what happened?

A. That is what happened.

Q. Now, did the theatres that we are referring

(Testimony of Edwin F. Zabel.)

to that Mr.—that were discussed, you say, between you and Mr. Scully in 1946, it at least included the Culver Theatre in Culver City, is that right?

A. Yes, that is for a time.

Q. Yes. Did Mr. Scully, the vice president in charge of Universal, say anything to you about the area of Culver City? Did he think that was a perfectly good area for first-run pictures? Did he say that?

A. Well, he just wanted more seats.

Q. Just wanted more seats?

A. Asked to play in the Culver Theatre.

Q. And he said the seats in that area were perfectly agreeable to him?

A. He wanted them spread all over at that time.

Q. Now, what is that time you are referring to?

A. Well, the theatres, for all of these theatres.

Q. 1946, isn't that right? A. Yes.

Q. And that continued through 1951?

A. Yes.

Q. The time you are referring to was from 1946 to 1951, a five-year period?

A. That is correct. I think I am getting confused now because there are some different theatres here at the time but most of the time they were these five theatres.

Q. Now, did you say to him that the Culver area was an improper area for first-run pictures?

A. I don't remember whether I did or not. As far as I [254] am concerned, it was.

Q. It was? A. Yes, an improper area.

(Testimony of Edwin F. Zabel.)

Q. An improper area for first run?

A. Yes, sir.

Q. So Mr. Blumberg—so Mr. Scully that is, the sales manager for Universal, said to you he is willing to put a Universal picture first run in an improper area, is that it?

A. Maybe he thought it wasn't an improper area. I always disagreed with him on that. I also disagreed with him on two theatres on Hollywood Boulevard but he said he wanted seats to compete with the big theatres on Hollywood Boulevard. He wanted two theatres.

Q. During that period—as a matter of fact, there were two theatres within several blocks of each other and playing simultaneously?

A. That is correct.

Q. There is no question about those two theatres being in substantial competition with each other?

A. In my opinion they shouldn't have played together at all.

The Court: That isn't the question.

The Witness: Yes, they were in substantial competition.

Q. (By Mr. Corinblit): There was no question but what the Culver Theatre was in substantial competition with the [255] Ritz Theatre?

A. Yes, they are quite close.

Q. They were in substantial competition?

A. Yes.

Q. Did Mr. Scully say that he objected to two

(Testimony of Edwin F. Zabel.)

theatres in substantial competition with each other playing simultaneously day and date?

A. No. He wanted two theatres because he wanted the seating capacity on Hollywood Boulevard comparable to the Pantages or the Chinese or the Egyptian or Warners.

Q. How many seats did the Culver Theatre have? A. I think around 1200.

Q. 1145 seats, isn't that right?

A. (No answer.)

Q. And the Vogue Theatre, when that played first run alone, had about 900 seats? A. 900.

Q. All right. Now, during this same time, at least part of this period—take it up to 1950 and looking at Loew's product and looking at Universal's product, they were playing day and date—they were playing first run in Fox houses, Loew's and one group of Fox houses for Loew's and one group of Fox houses for Universal with slight exception, isn't that right?

A. Loew's pictures were playing in Los Angeles, Wilshire [256] and Egyptian, and the Universal pictures were playing in the United Artists, the Ritz—well, the Vogue at that time you are talking about—Studio. [257]

Q. Now, it was also true, was it not, that at that time the Fox pictures, Twentieth Century-Fox pictures were playing in a unit of Fox houses, isn't that correct?

Mr. Johnston: At what time?

Mr. Corinblit: First beginning in 1949.

(Testimony of Edwin F. Zabel.)

The Witness: (No answer.)

Q. (By Mr. Corinblit): You remember that, Mr. Zabel?

A. Yes, '49. I don't remember just what theatres were in it.

Q. All right.

Mr. Corinblit: Your Honor, we will offer in evidence as Plaintiff's Exhibit next in order Twentieth Century-Fox play-off January 1, 1949 until September 1951.

The Court: It may be admitted.

The Clerk: Exhibit 46-A-6 in evidence.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 46-A-6.)

Q. (By Mr. Corinblit): Now, I will show you Plaintiff's Exhibit 46-A-6, Mr. Zabel, and ask you if it is not correct that on the first page, which covers firstly the first four months, regularly the Twentieth Century-Fox pictures played in a group of five—well, sometimes in five and sometimes four and sometimes three theatres, is that right?

A. They played one picture—one picture played in Loew's State, Chinese, Uptown and Loyola and played Loew's [258] State, Chinese, Uptown, Loyola and Carhay Circle.

Q. Carhay Circle. And would you read off the list that played in February 1949?

A. Played in the Vogue, Orpheum, Belmont, Culver and El Rey.

Q. Let us stop for a minute now and we will point out some of the other theatres.

(Testimony of Edwin F. Zabel.)

You say it played in the Vogue and would you name the other theatre?

A. Orpheum, Belmont, Culver and El Rey.

Q. The Orpheum Theatre is downtown and the Belmont Theatre—— A. Belmont.

Q. The Belmont Theatre is located, according to this map, on Vermont Street just north of Third, is that right? A. Yes.

Q. And what is the next theatre?

A. Culver.

Q. That is the same theatre, and what is the next one? Any other theatres in that group?

A. El Rey.

Q. Now, at that time, Mr. Zabel,——

A. I note on here that this says “moveover and reissues” too. I don’t remember what the pictures were—whether they were first run or not. [259]

The Court: Just a minute. Now, we have a couple more terms here. What do you mean by “moveover”?

The Witness: Well, a moveover generally is a picture that moves from one theatre to another without any clearance between them—an immediate move. It closes in a first-run theatre one day and moves over to another theatre the next day.

The Court: And you also used another term.

The Witness: Reissue. It is an old picture they bring back. Maybe they played it a couple of years before, but they bring it back and run it again.

The Court: All right.

Q. (By Mr. Corinblit): Now, Mr. Zabel, call-

(Testimony of Edwin F. Zabel.)

ing your attention—this is true then, during the year 1949, Twentieth Century-Fox pictures were played generally in a unit in Fox Theatres, Universal was playing in a unit of Fox Theatres, United Artists Downtown and Loew's pictures were playing in a unit of Fox Theatres.

That is true for 1949, isn't that right?

A. Yes, I think that is true.

Q. All right.

The Court: May I ask a question?

Mr. Corinblit: Yes.

The Court: During this period of time were the Fox pictures playing in any other theatres other than a Fox theatre?

The Witness: I think only in the United Artists Theatre. [260]

The Court: With the exception of the United Artists Theatre Fox pictures played the Fox Theatres.

The Witness: Yes, sir.

Q. (By Mr. Corinblit): United Artists Theatre at that time was owned by Joseph Schenck and United Artists Theatre Circuit, Inc.? A. Yes.

Q. Now, earlier this afternoon, Mr. Zabel, the court was having you compare these theatres in 1950. In the unit that played in Fox houses generally was included the Loyola Theatre, isn't that right? A. Yes.

Q. Now, the Loyola Theatre actually grossed for the year 1950 more than some of the other Fox The-

(Testimony of Edwin F. Zabel.)

atres on Wilshire and Hollywood Boulevard for 1950, didn't they?

A. I don't know. I don't have the records here.

Q. Well, do you remember that the Loyola Theatre was a better theatre than the Uptown Theatre in 1949 and in 1950?

The Court: Mr. Corinblit, you mean better financially, from a financial standpoint?

Mr. Corinblit: From the point of view of gross receipts.

The Witness: No, but I would think it would be.

Q. (By Mr. Corinblit): Pardon me?

A. I think it would be.

Q. You think the Loyola would be better? [261]

A. Yes.

Q. And do you remember that the Loyola Theatre was a better theatre from the point of view of gross receipts than the El Rey Theatre on Wilshire Boulevard, don't you? A. Yes, sir.

Q. And better than the Vogue Theatre on Hollywood Boulevard in 1950?

A. I don't know about 1950. I wouldn't say that.

Q. But you are not sure about 1950?

A. No, I am not.

Q. How about the Iris Theatre? The Loyola was a better theatre from the point of view of gross receipts than the Iris Theatre in 1950?

A. Well, I don't know. I would have to look at the record.

Q. Well, now, without regard to looking at the

(Testimony of Edwin F. Zabel.)

record, do you remember that it was a better theatre than the Ritz Theatre in 1950?

A. I wouldn't say as a theatre it is better. It depends on the picture.

Q. Well, now, the Loyola and the Uptown were playing the same pictures, weren't they?

A. Well, I said I think the Loyola outgrossed the Uptown.

Q. The Loyola will outgross the downtown and it is [262] located in the Westchester area and the other is on Wilshire Boulevard.

A. No, Western and Olympic.

Q. All right. In 1949, Mr. Zabel—I think you have testified that you supervised the buying of pictures in the Inglewood-Westchester area either directly or through people who worked for you. Now, did you learn in 1949 that there was an agreement between Fox, United Artists and another theatre, the La Tijera Theatre, to divide pictures in that area? Did you learn of that fact? A. No.

Q. You did not learn of it?

A. No. I know that they were playing pictures, but I didn't supervise or it was bought by Mr. Pirosh.

The Court: Will you keep your voice up?

The Witness: Supervised by Mr. Pirosh, bought by Mr. Pirosh.

Mr. Corinblit: You know, Mr. Zabel, that counsel for the defendants in this case have stated that that was a fact?

(Testimony of Edwin F. Zabel.)

The Witness: I didn't say it wasn't a fact. I said I didn't know anything about it.

Q. (By Mr. Corinblit): And you didn't know anything about it at the time?

A. No; I knew they were playing pictures, but I couldn't watch every theatre. [263]

Q. Well, did you know that to be a fact in 1950?

A. No.

Q. Did you know it to be a fact in 1951?

A. No.

Q. Mr. Zabel, did you know in 1951 that the La Tijera and Fox had agreed to split product?

A. No.

The Court: How far is the La Tijera Theatre from the Paradise Theatre?

The Witness: I believe—I would estimate it is about, between two and three miles.

Mr. Mitchell: I think the mileage is under two miles.

The Witness: Under two miles.

Q. (By Mr. Corinblit): Mr. Zabel, do you know of a case known as Fanchon and Marco, Inc. v. Paramount Pictures, Inc.?

A. Yes.

Q. Did you give a deposition in that case?

A. I don't remember whether I did or not.

Q. Do you remember that a deposition you gave in that case was read into evidence in that case?

A. No.

Q. All right. I will show you, Mr. Zabel, a transcript of the deposition that was read into evidence in this case and ask you to examine the question

(Testimony of Edwin F. Zabel.)

beginning with the words, "Now, did you know that the La Tijera and some of the [264] Fox-Inglewood Theatres shared the product of some of the distributors?"

I will ask you to read that question and then read that last answer.

Mr. Johnston: May I look at that?

Mr. Corinblit: Yes. [265]

Q. (By Mr. Corinblit): Now, does that refresh your recollection that in 1951 you did know that there was a split of product in 1951?

A. I didn't say anything about a split of product.

Q. I beg your pardon?

The Court: I am sorry. I can't hear you.

The Witness: I didn't say anything about a split of product.

Q. (By Mr. Corinblit): In that case, Mr. Zabel, were you asked this question and did you give this answer:

"Q. Did you know that the La Tijera and some of the Fox Inglewood theatres shared the product of some other distributors?

"A. I understand they do."

Did you give that answer?

A. I imagine that they all played the product from different distributors.

Mr. Corinblit: I will move to strike the answer.

The Court: The question is, did you make that answer?

(Testimony of Edwin F. Zabel.)

The Witness: Apparently I did. It is my deposition here. I apparently did.

Q. (By Mr. Corinblit): You did state that?

A. Yes.

Q. Were you asked this question: [266]

"Q. Did you understand that Bert Pirosh laid off bidding on some situations so as to permit Bill Kupper at the La Tijera to get some pictures from some other distributors?

"A. You mean recently?

"Q. No, some time ago. "A. I don't.

"Q. You don't? "A. No.

"Q. Have you ever talked to Bert Pirosh about the La Tijera situation at all?

"A. No. I just understood this morning that they stopped a certain amount of bidding in Inglewood. That's all I know."

Did you give those answers?

A. I guess I did if they are in here. I am sure I did.

Q. Then you did know in 1951 at that time Fox and La Tijera were dividing pictures in the Inglewood-Westchester area?

A. I didn't say that in the book, either.

The Court: Read the question. Now, answer the question. If you don't know, say so.

(Question read.)

The Court: You can answer that question.

The Witness: I don't know what he means by dividing pictures. [267]

Q. (By Mr. Corinblit): Do you know what is

(Testimony of Edwin F. Zabel.)

meant to divide pictures? A. No.

Q. You don't know?

The Court: Did you know what was meant in the previous case?

The Witness: I understand from what I can understand in buying pictures, I figure they were all playing different companies' pictures. If he said split pictures, I might know what he meant.

Q. (By Mr. Corinblit): When the question was asked you, did you know the La Tijera and some of the Fox Inglewood theatres shared the product of some of the distributors?

"A. I understand they do."

And when you answered:

"Q. Have you ever talked to Bert Pirosh about the La Tijera situation at all?

"A. No. I just understood this morning that they stopped a certain amount of bidding in Inglewood. That's all I know."

What did you mean when you said you understood this morning that they stopped a certain amount of bidding? Wasn't that the equivalent of split of product?

A. Not necessarily. [268]

Q. Was it that they agreed not to bid against each other?

A. That doesn't mean a split of product.

Q. But it does mean that they agreed not to bid against each other?

A. I don't know what you mean by what they agreed to, whether they stopped bidding. It is the

(Testimony of Edwin F. Zabel.)

difference between bidding and the distributor selling product to the theatres.

Q. How long had this matter with respect to—this testimony was given in June 1951. How long prior to June 1951 had this same arrangement been made?

A. I don't know because I didn't handle the arrangements at all. Mr. Pirosh handled all their bidding situations.

Q. He was operating under your supervision?

A. Yes, but he did the work.

Q. He didn't report this matter to you?

A. No, sir, it isn't necessary.

Q. You mean you never learned about it?

A. He did not report it. That was his job.

Q. But you learned about it when you testified in the deposition in 1951, isn't that right?

A. I think your question is confusing. I don't know whether I am answering right or not, but I didn't have anything to do with it at all.

Q. Mr. Zabel, in fact, you know that there was a split [269] of product in which the distributors were involved with the exhibitors in the Inglewood area from 1949 up through June 1951, when you testified in this deposition, isn't that correct?

A. I don't know whether there was split of product there or not.

The Court: May I ask a question?

Mr. Corinblit: Yes.

The Court: Will you please tell the jury what

(Testimony of Edwin F. Zabel.)

you mean by split of product? We have been using that term.

The Witness: Split of product is where a distributor sells some of his product to one theatre and agrees to sell some of it to the other theatre. In other words, they may sell any number of pictures. They may sell them half, they may sell them 25 per cent or they may sell 10 pictures to one theatre, and sell the rest to the other. That is split of product.

The Court: Then if a distributor sells a picture to more than one theatre, then that is a split of product, is that right?

The Witness: I believe just one picture would be considered a split of product, but generally it is more.

The Court: One or more pictures.

The Witness: Yes.

The Court: He sells a picture to more than one theatre. [270]

The Witness: Yes.

The Court: That is a split of product?

The Witness: Yes.

Q. (By Mr. Corinblit): What did you mean when you said they stopped a certain amount of bidding in Inglewood? Who stopped a certain amount of bidding?

A. Evidently the distributors.

Q. The distributors did? A. Yes.

Q. In June 1951?

(Testimony of Edwin F. Zabel.)

A. I don't know the date, but I imagine they stopped, they agreed to stop it.

Mr. Johnston: Mr. Corinblit, you are reading something, the date of which is June 1951. As far as the witness is concerned from what you are reading, he isn't talking about 1951 necessarily. He is talking about some other period of time. I think it would be well if you made that clear.

The Court: When was the deposition taken?

Mr. Corinblit: In June of 1951, your Honor, and the questions and answers referred to this current period. Those are the questions in the record.

Mr. Mitchell: Now, the deposition couldn't have been taken in June 1951. We were on trial at that time.

The Court: It is possible, however, I have found [271] out, to take depositions while we are on trial.

Mr. Johnston: Your Honor, I was present at the deposition. It was taken months before the trial.

The Court: What does the record show?

Mr. Corinblit: "Mr. Reich: We will read from the deposition of Edwin F. Zabel, taken June 7, 1951."

Q. Now, Mr. Zabel, it was the policy, wasn't it, as far as Fox was concerned in 1951, to work out splits of product with the distributors and competing exhibitors?

A. That was the policy long before that.

Q. I beg your pardon?

A. Perhaps the policy long before that.

Q. That had been the policy a long time?

(Testimony of Edwin F. Zabel.)

A. There were splits worked out.

Q. Between Fox and competitors?

A. Distributors were agreeable to selling part of the product to one theatre and another part of the product to another theatre. I don't happen to know very much about this particular Inglewood area. I didn't have anything to do with it.

Q. But it was the policy of Fox to work out those arrangements, wasn't it?

A. It wasn't a policy of Fox. They worked out some situations where the distributor agreed to sell some to Fox [272] and some to other theatres, if that is what you mean.

Q. As part of those arrangements, the distributor was committed to sell to one theatre certain pictures and to sell to the other theatre the other pictures, isn't that right?

A. I don't know what you mean by one theatre some pictures—well, that is what I said.

Q. That was a commitment on their part.

A. What do you mean by commitment?

Q. By the distributors. [273]

* * * * *

Q. Mr. Zabel, yesterday at the end of the day you were describing some matters and I want to describe another fact situation for contrast purposes. [281]

In your business as chief film buyer of Fox in 1949, 1950 and 1951, did you know of an arrangement in Inglewood whereby among the eight major film companies the product of certain companies

(Testimony of Edwin F. Zabel.)

was allocated to certain theatres and certain theatres divided the product of the distributors among themselves? Did you know of such an arrangement?

A. No.

Q. Do you refer to that kind of an arrangement as a split of companies or an allocation of product? Is that how that is referred to in the business?

A. No. If there is a—I imagine if there is a certain company's products or a portion of it allocated to the theatres by the distributors, we refer to it as a split.

Q. Looking at it from the point of view of the theatre, the arrangement I am describing is where a group of theatres get together and agree to divide the product of the film companies in a certain way, that is, they agree among themselves who is to get what pictures of what companies, and then the distributors go along with and enter into that arrangement. Do you have a term for that kind of an arrangement?

A. No. I don't think there is a term that I know of.

Q. There is no specific term?

A. If that happens, I don't know of any term.

Q. Did you know of the existence of such an arrangement in the Inglewood area? [282]

A. No, I did not.

Q. You never knew about that? A. No.

Q. Mr. Pirosh never told you about it?

A. No.

Q. Now, having in mind that same kind of an

(Testimony of Edwin F. Zabel.)

arrangement, did you know of an arrangement as part of that deal in the Inglewood area whereby the film companies, despite the arrangements as to what theatres would get what pictures, sent out bid letters? Did you know there was such an arrangement?

A. I know there was bidding in the Inglewood area.

Q. You just know there was bidding?

A. Yes.

Q. You don't know that there was an advance arrangement as to who was to get the pictures even before the bids were sent out?

A. No, because Mr. Pirosh was assigned to all bidding situations, and that came under his jurisdiction.

Q. So if anybody knows about it, it is Mr. Pirosh? A. Yes.

Q. You didn't discuss that with Mr. Bertero?

A. No.

Q. Or Mr. Bowser? A. No. [283]

Q. Who was Mr. Bowser, by the way, in 1949, 1950 and 1951?

A. Mr. Bowser was the general manager of Fox West Coast Theatres.

Q. Now, we were talking yesterday, too, about the product that Fox was playing first run in 1949, that is the product of Loew's, Twentieth Century-Fox, and Universal. Did you try to get RKO pictures on a general basis in 1949 on behalf of Fox?

(Testimony of Edwin F. Zabel.)

A. I don't know what you mean by on a general basis.

Q. That is, did you try to get them regularly for the Fox theatres? A. No, I don't recall.

Q. You don't recall? A. No.

Q. Do you remember where RKO pictures were playing in 1949?

Mr. Mitchell: On what run, your Honor?

Mr. Corinblit: First run Los Angeles.

The Witness: I think the RKO played their pictures in the RKO Hillstreet and Pantages Theatre in Hollywood generally.

Q. (By Mr. Corinblit): In 1949, 1950 and 1951, did you on behalf of Fox try to get Columbia pictures on a regular basis for Fox theatres first run Los Angeles? [284]

A. I don't recall trying to get them. I believe we played a Columbia picture. I don't remember what year it was, though.

Q. Do you remember where Columbia pictures were playing regularly in 1949?

A. I think—well, I don't know for sure where they were playing, but I believe they played some in the RKO Downtown and the Pantages.

Q. Just some of them, you think?

A. As far as I recall.

Q. Did you try to get in 1949, 1950 and 1951 any of the Warner pictures first run Los Angeles on a regular basis?

A. I don't believe so. I think they played—

Q. Did you try to get any of the Paramount—

(Testimony of Edwin F. Zabel.)

Mr. Mitchell: I didn't hear the last part of the answer.

The Witness: I don't believe so.

Q. (By Mr. Corinblit): Did you try to get Paramount product on a regular basis?

A. I believe we played some Paramount product, yes, but I don't remember what year it was.

Q. You don't have any recollection whether in 1949 you tried to get Paramount on a regular basis?

A. No.

Mr. Corinblit: I would like to offer in evidence, [285] if the court please, the play-off of Warner pictures for the period 1949 to 1951, RKO pictures first run—this is all first run—1949 to 1951, and Columbia pictures 1949 to 1951, at this time that group.

I will ask that the Warner play-off be marked as 46-A-7, the RKO be marked as 46-A-8 and the Columbia schedule be marked as 46-A-9.

Mr. Mitchell: Your Honor, I wish to object to the Columbia and RKO schedules upon the ground that they are immaterial. Those companies are not defendants in this case. What they did with respect to first run has nothing to do with the issues.

The Court: That may be perfectly true, but supposing Fox was able to corral the entire market?

Mr. Mitchell: That would have nothing to do with this case because the market for RKO and Columbia pictures is not a part of the issues of the case.

(Testimony of Edwin F. Zabel.)

The Court: It might show Fox control of the entire market.

Mr. Mitchell: Yes, but they are not charged with the control of RKO or Columbia market.

The Court: Objection overruled.

The Clerk: Exhibits 46-A-7, -8, and -9. [286]

(The exhibits referred to were received in evidence as Plaintiff's Exhibits 46-A-7, 46-A-8, and 46-A-9.)

Mr. Corinblit: I will ask that there be marked for identification as an exhibit United Artists play-off for 1949 to 1951.

Mr. Mitchell: Same objection, your Honor.

The Court: Same ruling.

Mr. Corinblit: As 46-A-10.

The Clerk: Is this in evidence or for identification?

Mr. Corinblit: Are these admitted in evidence?

The Court: I don't presume there is any question as to authenticity of the exhibits.

Mr. Corinblit: No, sir, there is not.

The Clerk: 46-A-10.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 46-A-10.)

Q. (By Mr. Corinblit): Now, Mr. Zabel, in 1949 and 1950 did the film company people for Columbia solicit your company to exhibit Columbia pictures on a regular basis in the Fox houses?

A. I don't remember exactly. I believe we played

(Testimony of Edwin F. Zabel.)

some. I don't know whether it was that year or not. I don't know whether they solicited us or we solicited them. [287]

The Court: You testified yesterday that Universal solicited them.

The Witness: Yes, Columbia.

The Court: Columbia.

The Witness: Yes.

The Court: Universal actually solicited the pictures, but you don't remember whether Columbia solicited or not.

The Witness: As I recall, we did play a Columbia picture. There is one I happen to recall, but I don't remember whether it was in the year 1949 or 1950.

Q. (By Mr. Corinblit): Now, turning for a moment to the RKO picture. RKO solicited Fox to exhibit their pictures on a regular basis in 1949, did they not?

A. I don't remember. I don't believe so.

Mr. Mitchell: You are still talking about first run?

The Witness: Yes.

Mr. Corinblit: Yes, first run.

Q. (By Mr. Corinblit): Did the Warner Company solicit Fox to exhibit their pictures on a regular basis first run? A. I don't recall.

Q. And did the Paramount Company solicit Fox to exhibit their pictures on a regular basis first run?

A. I believe we played some Paramount pic-

(Testimony of Edwin F. Zabel.)

tures. Whether they solicited us or we them I don't remember. I don't remember whether it was in 1949 or 1950 or prior to that. [288]

Q. With respect to the Paramount pictures my question is, did they solicit you to play their pictures on a regular basis in the Fox Theatres?

A. I don't understand what you mean by a regular basis.

Q. Well, I know that you played a Paramount picture now and again or you might play a Warner picture now and again or perhaps even RKO picture now and again, but my question is whether on a regular basis they regularly, as their pictures came out, came to Fox and said, "Will you play our picture, will you play our picture"?

A. I don't believe so.

Q. And that same answer is true as to RKO and the same answer is true as to Columbia and the same answer is true as to Warners and the same answer is true as to Paramount, is that right?

A. I believe so, yes.

The Court: May I ask a question?

Mr. Corinblit: Certainly.

The Court: During this period of time was there enough Fox pictures to take care of your needs or was it necessary to get pictures from the other companies?

Mr. Mitchell: First run.

The Witness: Generally, I believe, we had enough [289] Fox pictures to take care of our needs.

The Court: It was only now and then, if you

(Testimony of Edwin F. Zabel.)

didn't have enough Fox pictures that you went out and got pictures from some other company, is that right?

The Witness: That is true.

Q. (By Mr. Corinblit): It is true, Mr. Zabel, is it not, that when you bought pictures in operating your buying policy, you were trying to make as much money as you could for the Fox Theatres, isn't that correct? A. That is correct.

Q. And there were times when there were very good pictures of Warners or RKO or Columbia or Paramount that would have helped you make more money in your Fox Theatres than to play the pictures you had, isn't that true?

A. Well, Fox Twentieth Century — Twentieth Century-Fox owned the Fox West Coast Theatres and they wanted an outlet for their pictures and they used their own theatres first.

Q. Now, let us talk about the theatres that weren't playing Twentieth Century-Fox product in 1949.

Let us talk about it at a time prior to November 1949. You owned Loew's State Theatre. You owned the Egyptian Theatre and you owned the Wilshire Theatre on Wilshire Boulevard. They weren't playing Fox product, were they, regularly, if at all? A. In 1949? [290]

Q. Yes.

A. Well, I don't recall just when.

Q. Perhaps you would want to take a look at the Loew's play-off.

(Testimony of Edwin F. Zabel.)

I show you Exhibit 46-A-4, Mr. Zabel, 1949, and show you with respect to Loew's pictures that you were playing in the Los Angeles, Wilshire and Egyptian, isn't that true? A. Yes.

Q. Now, those theatres, with respect to those theatres certainly there were occasions when there were pictures of Paramount or Warner or Columbia or RKO which, if you had had them, you might have made more money than you made just playing those pictures, isn't that right?

A. I don't know. Looking at the titles of these pictures they were some of the best pictures made during that year.

Q. That is the Loew's pictures? A. Yes.

Q. Now, were they all the best pictures—was it true all the time you had the best pictures in the house that you could get?

A. I don't think so, but I don't know that we could get all the best pictures.

Q. The question is did you try to get the best pictures from Warners, from RKO, from Columbia, from Paramount? [291]

A. No.

Q. Now, wasn't that against the best interests of your company? A. Not necessarily.

Q. It wasn't against the best interests of your company if you didn't try to get the best pictures you could, is that the arrangement?

A. No, it is not necessarily to make the most money on the best pictures all the time.

Q. What other standard did you have of buying

(Testimony of Edwin F. Zabel.)

pictures for Fox at that time other than trying to make the most money?

A. Fox owned the Fox Theatres and they wanted to play their pictures in the Fox Theatres.

Q. Now, Mr. Zabel——

A. Is that what you want?

Q. I am referring to those theatres that did not play Fox product.

My question is, other than trying to make the most money for Fox, and you have testified that that necessarily wasn't the standard because you didn't go after the best pictures from the other companies, now I want to know what else you were trying to do other than trying to make the most money for Fox.

A. I was trying to make the most money for Fox.

Q. Yet you did not go after the best pictures from [292] these four companies, isn't that right?

A. You don't always make the most money on the best pictures.

Q. Now, as a matter of fact, in not going after this product, you didn't even know what terms you could get from these companies for their pictures?

A. We had enough pictures that we thought we could buy from the company and they were satisfactory and we made substantial money on them.

Q. Now, it is a fact, isn't it, Mr. Zabel, that the reason you didn't go after the product of these four companies is that in Los Angeles in 1949 there was an arrangement whereby Fox would not try to get

(Testimony of Edwin F. Zabel.)

the pictures of these companies and the theatres that were playing those companies' product would not try to get the pictures that Fox was playing, isn't that correct?

A. I don't know of any arrangement.

Q. You don't know of any such arrangement?

A. No.

Q. As a matter of fact, that exact arrangement was in force in Los Angeles at least from 1945 to 1949, isn't that correct?

A. I don't know of any arrangement.

Q. Now, did you know that Warners or did you learn that Warners, the Warners Theatres never tried to get Loew's [293] pictures in 1949? Did you know that? A. No, I didn't know that.

Q. Did you know that the RKO Theatres never tried to get Loew's pictures in 1949? A. No.

Q. Did you know that the Paramount houses in this area never tried to get any Loew's pictures in 1949?

A. Well, I believe that these companies had their own— owned their own theatres at that time except the Paramount, and I believe Paramount had a franchise with those theatres.

The Court: The question is not what you believe. The question is do you know.

The Witness: I know.

The Court: All right.

Q. (By Mr. Corinblit): Now, with respect to Universal pictures that you testified the Fox Theatres played over a period of five years, you know,

(Testimony of Edwin F. Zabel.)

don't you, that the RKO Theatres never tried to get those Universal pictures during that period, don't you?

A. Well, I don't know whether they tried to get them or not, but I do know Mr. Scully wanted a group of theatres from us and he wanted those theatres to play his pictures.

Q. And year in and year out from '49 to '50 RKO never tried to get Universal pictures for their theatres, isn't that correct? [294]

A. Well, as I understand they thought they weren't good box office pictures and wouldn't play them.

Q. RKO thought they weren't good box office pictures? A. I understand that.

Q. None of the Universal pictures, they thought, were good box office pictures?

A. They just couldn't pick the good ones.

Q. Even with respect to the good pictures RKO didn't try to get those pictures?

A. I don't know if they did or not.

Q. You know that you never had to compete with RKO for Universal pictures?

A. Because Mr. Scully wanted to sell them to our theatres when he asked for them.

Q. RKO never tried to interfere with that?

A. I don't know.

Q. Warners never tried to interfere with that?

A. I think Warners was in the same position we were when we got Fox productions, because War-

(Testimony of Edwin F. Zabel.)

ners owned their theatres and wanted their pictures played in their theatres.

Q. My question is simply whether or not you know Warners never tried to interfere with Fox—that Fox had Universal pictures for that five-year period?

A. I don't know what Warners did.

Q. Now, Mr. Zabel, we now have in evidence the play-off [295] from all of the companies, all eight companies from 1949 through 1951.

Now, I wonder if you can answer this question. In 1949 isn't it a fact that if Fox bought a picture first run in this city of Los Angeles that your company would not permit any other independent theatre or any other theatre to play that picture first run with the single exception of the United Artists Theatre downtown. Isn't that true?

A. I think that is correct.

Q. And isn't it a fact that that policy, on behalf of Fox, existed not only in 1949 but at least from 1945 on?

Mr. Mitchell: I object to the earlier date, your Honor. He keeps trying to slip back into earlier periods and I think they are immaterial in this lawsuit.

The Court: Objection overruled.

The Witness: Fox owned the pictures and owned the theatres and they played their pictures in their theatres.

The Court: That is not the question. I assume that if Fox had the right to play pictures first run

(Testimony of Edwin F. Zabel.)

in Los Angeles that Fox objected to any other company playing first run of those pictures.

The Witness: Any other theatre in the metropolitan area.

The Court: It was an exclusive right, was it not?

The Witness: Yes, sir. [296]

The Court: It was an exclusive right and Fox insisted it be exclusive.

The Witness: That is true.

The Court: Nobody else could play the picture.

The Witness: That is true.

Q. (By Mr. Corinblit): Now, Mr. Zabel, we were talking yesterday about downtown Los Angeles first run.

I want to get absolutely clear that you remember in 1949 when the Fox Theatres were playing Loew's pictures first run, that is Egyptian, the Wilshire and the Los Angeles, you were not bidding for Loew's pictures at that time. There was no bidding set up in 1949?

A. I don't believe we were.

Q. Now, do you know Mr. Joseph Schenck, Mr. Zabel?

A. Yes, sir.

Q. And who did you know Mr. Schenck to be in 1949?

A. I believe at that time he was head of the United Artists Theatre Circuit.

Q. What connection did he have with the defendant Fox West Coast?

A. Fox West Coast?

(Testimony of Edwin F. Zabel.)

Q. Yes.

A. I don't believe he had any connection with Fox West Coast.

Q. 1949, Mr. Zabel. [297]

A. I believe—was that when—we were still operating in the United Theatres?

Q. Yes. Now, what connection did he have with your company when you were doing that?

A. Didn't have any connection with our company. He owned United Theatres Circuit, owned a portion of the group of theatres that were in the United West Coast Theatres.

Q. And in addition to owning a portion of the theatres that were in that circuit—I will withdraw that.

Now, do you know what connection he had with Twentieth Century-Fox, what other connection—did you know him to have any connection with Twentieth Century-Fox in 1949?

A. Well, I think he was—I don't know what his title was, but he worked for Twentieth Century-Fox at the studio.

Q. And what was his responsibility, if you know?

A. I imagine the studio was his big responsibility. I don't know what his responsibilities were, but I imagine he was one of the executives at the studio.

Q. He was one of the executives?

A. Yes.

Q. So Mr. Schenck at the same time was an ex-

(Testimony of Edwin F. Zabel.)

ecutive at the studio and at the same time had the interest in the group of theatres that you and his company operated jointly, is that right?

A. Well, I guess he was a stockholder in the United [298] Artists Theatres, yes. I don't know whether he owned it.

Q. And his company and your company operated these theatres jointly, isn't that right?

A. Our company operated them.

Q. Your company operated them?

A. Yes.

Q. His company, however, was represented on the board of directors, weren't they? [299]

Mr. Mitchell: Of what company?

Mr. Corinblit: Of the company operating the United Artists-Fox West Coast circuit of theatres.

The Witness: Well, I don't remember. I think the Service company was operating the theatres, if I am not mistaken.

Q. (By Mr. Corinblit): But his company was represented on the board of directors, though, of the company owning the Fox-United Artists circuit of theatres?

A. I believe they were on the United West Coast Theatres. I believe he had some directors.

Q. On the board of directors? A. Yes.

Q. How about officers? A. I don't know.

Q. Don't you remember that they had representatives among the officers?

A. No, I don't remember.

Q. Mr. Zabel, I think yesterday you testified

(Testimony of Edwin F. Zabel.)

that the Loyola Theatre, that you would have expected the Loyola Theatre to be a better theatre in terms of gross receipts than the Uptown Theatre.

Do you remember the approximate seating in the Uptown? A. About 1700 seats. [300]

Q. 1700 seats, and do you remember the approximate seating in the Loyola?

A. Around 1200.

Q. Around 1200. So there was 500 seats more in the Uptown than there were in the Loyola Theatre, right? A. Yes.

Q. Then you testified that the Loyola Theatre was a better theatre than the Uptown. I take it that if the Paradise Theatre—do you know the Paradise Theatre?

A. Yes, I know where it is.

Q. That is just two or three blocks from the Loyola, isn't it? A. I believe so.

Q. It was built in 1950 and the Loyola was built in 1945?

A. I believe those are the approximate dates.

Q. And from a physical point of view, it is at least as handsome and as comfortable and as good a theatre, from a physical point of view, as the Loyola, certainly, isn't that right?

A. I don't know whether it is or not.

Q. Have you ever been in the Paradise?

A. Yes.

Q. Don't you have an opinion on that point?

A. Yes. I think our theatre is pretty nice. [301]

(Testimony of Edwin F. Zabel.)

Q. I am sure you would think that. The question is whether you are willing to admit that the Paradise is just as nice as the Loyola, if not nicer.

A. I don't know whether it is nicer. I don't know about a comparison. I know our theatre is very nice and the Paradise is a newer theatre.

Q. You would expect the Paradise Theatre to be a better theatre than the Uptown Theatre, too, wouldn't you? A. I don't know.

Q. Now, Mr. Zabel, yesterday in answer to the court's questions at the end of the day with respect to the Universal deal, you remember you testified you made a deal with Mr. Scully, and as a result of that deal you had Universal product for over a period of five years.

I want to ask you first, do you know as a matter of fact whether or not before you had the discussion with Mr. Scully, Mr. Skouras had had a discussion with the president of Universal.

A. No.

Q. You don't know that one way or the other?

A. No.

Q. You don't know whether that had been worked out even before you had a conversation with Mr. Scully? A. No.

Q. After you testified as to the arrangement and the [302] result, that you had five years of product of Universal, the court asked you some questions about the terms, and I think you testified that each picture coming off the line was

(Testimony of Edwin F. Zabel.)

negotiated for separately, except that you would say that maybe sometimes you would negotiate for five pictures at a time.

Was that your testimony, that you negotiated each picture separately?

Mr. Mitchell: What his testimony was is in the record, your Honor. I don't think that is a proper question. I object to it on that ground. What his testimony is is in the record.

Mr. Corinblit: I thought I would save time by not——

The Court: My recollection of the testimony was that some previous time they had negotiated the pictures in groups of five at a time or for a season, but at the present time they were negotiating one picture at a time.

Mr. Corinblit: That is during the period of time Mr. Zabel was talking about.

The Court: That is 1949, 1950 and 1951. That is my understanding of the testimony.

Q. (By Mr. Corinblit): Is that right?

A. I believe that is true. As far as I remember, if was in 1950 and 1951 we negotiated one picture at a time for each theatre.

Q. What do you mean by the word negotiate as you use [303] it there? Do you mean you would start out with one figure and the film companies would start out with another figure, and then when you were all through, you might work out something in the middle or work out another figure is that what you mean?

(Testimony of Edwin F. Zabel.)

A. It could possibly be, yes.

Q. That is what you mean by the term negotiate? A. Yes.

Q. First, Mr. Zabel, let me ask you a question. Isn't it a fact that contrary to that agreement you had an agreement with Universal in 1949, 1950 and 1951 that virtually every picture that was to be played in the Fox theatres was to be played on a particular term, specific term?

A. No, I don't agree with that.

Q. Didn't you have an agreement that virtually every picture was to be played on a 20 to 40 per cent sliding scale?

A. Generally a sliding scale didn't vary as far as 20 to 40 per cent, but the figures might vary, depending on the year they were playing.

Q. Now, my question is as to the terms, not the result. The fact is that you had an understanding with them that every picture coming off, with very, very rare exceptions, would be played at fixed terms, 20 to 40 per cent sliding scale, and we will go into what that means in a minute—isn't that a [304] fact?

A. We generally played most pictures on a sliding scale.

Q. I am talking about a particular sliding scale, 20 to 40 per cent sliding scale.

A. Most all sliding scales were 20 to 40 per cent, as I recall.

Q. Then it was your understanding you did have an arrangement with Universal that every

(Testimony of Edwin F. Zabel.)

picture coming off would be played at 20 to 40 per cent sliding scale? A. No, we did not.

Q. With rare exceptions.

A. Some were played flat rental.

Q. How many would you say were played flat rental? More than three?

A. Generally we played double bill. Sometimes there was a flat rental price negotiated for the pictures and there may have been some situations where they played two pictures on one scale, too. I don't recall. I would have to check the record.

The Court: Mr. Witness, let's stop a minute. Isn't it true when you play a double bill, the lower half, the poorer picture, you played that usually on a flat basis?

The Witness: Generally we do.

The Court: And the top of the bill, the better picture, [305] is played on a sliding scale basis?

The Witness: Yes.

The Court: So when you say the poorer picture from Universal was played at the bottom half of the bill, it was on a flat basis as a general rule?

The Witness: As a general rule, but there are occasions when you put them on one sliding scale, two pictures for the percentage, and they divided that up the way they wished. I don't recall whether any of these pictures played that way or not. I would have to check the records to see if they were all on the same 20 to 40 per cent.

Q. (By Mr. Corinblit): I want to give you a chance to check your records right now, Mr. Zabel.

(Testimony of Edwin F. Zabel.)

Mr. Corinblit: I will show counsel the cut-off cards of Universal in the Ritz Theatre, 1949-50, and I believe 1950-51, and United Artists—I will describe these by series—United Artists series pictures 101, series pictures 621, and series beginning 681, and the series beginning 901.

I ask that the four in that group for the United Artists Theatre downtown be marked as a single exhibit next in order, Exhibit 47-A.

Mr. Johnston: What theatre?

Mr. Corinblit: United Artists Theatre.

Mr. Johnston: What period of time? [306]

Mr. Corinblit: Roughly the period is 1949 through 1951, and I will ask that these——

Mr. Johnston: I am going to object to the introduction——

The Court: Just a minute. He is trying to identify the exhibits.

Mr. Johnston: All right.

The Clerk: Mr. Corinblit, the other will be 47-A-1.

(The exhibit referred to was marked as Plaintiff's Exhibit No. 47-A-1 for identification.)

Mr. Corinblit: The United Artists group will be 47-A-1.

I will ask that the cut-off cards for Universal for the Ritz Theatre, series 681 and the series beginning 901 be marked as 47-A-2.

The Clerk: 47-A-2.

(The exhibit referred to was marked as

(Testimony of Edwin F. Zabel.)

Plaintiff's Exhibit No. 47-A-2 for identification.)

Mr. Corinblit: Then I will ask that the cut-off cards for the Guild Theatre with series 681 be marked as 47-A-3.

(The exhibit referred to was marked as Plaintiff's Exhibit No. 47-A-3 for identification.)

The Court: Which was the first theatre?

Mr. Corinblit: The first one was the United Artists [307] downtown, the second was the Ritz Theatre, and the third was the Guild Theatre.

Counsel, I will show you the exhibits marked 47-A-2 and 47-A-3.

The Court: These are just for identification.

Mr. Corinblit: Yes, just for identification.

At this time, your Honor, I would like to offer in evidence Exhibits 47-A-2 and 47-A-3.

Mr. Johnston: Those are what theatres?

Mr. Corinblit: The Ritz and the Guild Theatres.

Mr. Johnston: I have no objection to any of them with the exception of the United Artists, which is not a Fox West Coast operation.

The Court: 47-A-2 and 47-A-3 will be received in evidence.

The Clerk: Exhibits 47-A-2 and 47-A-3.

(The exhibits referred to were received in evidence and marked as Plaintiff's Exhibits 47-A-2 and 47-A-3.) [308]

The Court: 47-A-2 and 47-A-3.

(Testimony of Edwin F. Zabel.)

Q. (By Mr. Corinblit): Now, the Ritz Theatre was a Fox theatre in 1949, '50 and '51?

A. Yes.

Q. Mr. Zabel, I will ask you to look at Exhibit 47-A-2 and I will take this subject to correction of counsel, is a cut-off card for Universal for the Fox, Ritz Theatres. Perhaps, may I explain what a cut-off card is, your Honor?

The Court: Yes. I think the witness should explain it or you should or you can stipulate as to what it means.

Mr. Corinblit: I think we can stipulate as to what a cut-off card is. We have done it before.

A cut-off card, ladies and gentlemen of the jury, is a record which the film company keeps of each picture that it distributes.

Ordinarily a cut-off card is set up for each particular theatre, and for that theatre they have the list of all of the pictures that they are releasing in a given season— one card for '49 for the Ritz Theatre, one card for '50 for the Ritz Theatre, one card for '51 for the Ritz Theatre and so on.

On the cut-off card they have the name of the picture and then the terms that have been negotiated — that is what the terms were that the parties agreed to pay for the film. [309]

They also have the date on which the picture was played and then finally they will have the amount of money actually paid by the theatre for the picture.

The Court: Is that stipulated to?

(Testimony of Edwin F. Zabel.)

Mr. Westbrook: Just a moment, if your Honor please.

Your Honor, that description is generally acceptable except I think counsel will agree that the terms are not always complete as shown on the distributor's cut-off card, and it is very frequently necessary to refer to the film licensing agreement to determine, for example, that would be true in the case of a sliding scale because you wouldn't know what the scale was from the cut-off card. You would have to go to the individual scale for each theatre as shown on the film licensing agreement.

Is that not correct, counsel?

Mr. Corinblit: That is sometimes true, yes. You do not have on the cut-off card the actual scale.

Mr. Westbrook: That is true in all instances with a sliding scale.

Mr. Corinblit: Yes. And when referring to a sliding scale they are referring to a term outside of the cut-off card, but we will explain that to the jury a little fuller.

Q. Now, looking at Exhibit 47-A-2——

Mr. Johnston: Will you make clear that these documents are Universal documents and not Fox West Coast? [310]

Mr. Corinblit: These documents are maintained by the film company and not by Mr. Johnston's client, the Fox West Coast Company.

They have separate records. They have their own records that have the same data.

(Testimony of Edwin F. Zabel.)

Mr. Johnston: I think that is an assumption that may be unwarranted.

The Court: Have similar data. Let us put it that way.

Mr. Johnston: Maybe.

Q. (By Mr. Corinblit): Mr. Zabel, Plaintiff's Exhibit 47-A-2 shows that during the '48 to '49 season there were played in the Ritz Theatre roughly eight pictures on first run—28 pictures.

Mr. Westbrook: 28 Universal pictures.

Mr. Corinblit: Yes, 28 Universal pictures.

The Court: Mr. Corinblit, let us stop now and define what you mean by "season." You said "'48-'49 season" and let the jury understand what you are talking about by "season."

Mr. Corinblit: In the motion picture business the customary season in the past has been, although there is some variation now I believe, to figure the motion picture season from September of 1949 to August 31 of the following year. It is a fiscal year. Beginning in the fall and running to the next fall. [311]

They don't begin from January 1 to January 1, but from September 1 to September 1. That is called a "season," and since they overlap two years you would have to call it the '48-'49 season or '49-'50 season.

I am now referring to the '48-'49 season.

Q. Now, of those pictures, Mr. Zabel, of this approximately 28 pictures, 26 of them played on

(Testimony of Edwin F. Zabel.)

the exact same scale agreement, 20 to 40 per cent sliding scale.

Two of them played at flat rental and the flat rental was the same, \$400 for the year.

The Court: Wait a minute. Let the witness say "Yes" or "No." Don't you do the testifying.

Mr. Corinblit: Yes, your Honor.

Mr. Mitchell: May he explain his answer also?

The Court: Yes, he may explain if he wishes to.

The Witness: This is not complete. It says here from 40 to 20 per cent, but I do not know what the increments are in the sliding scale. The increments can vary.

Q. (By Mr. Corinblit): All right.

A. Depending on the basic expense.

The Court: As far as that record is concerned it shows the same sliding scale.

The Witness: This shows that the percentages vary from 40 to 20 per cent on a sliding scale but the sliding scale may be different on each picture.

Q. (By Mr. Corinblit): As far as this record is concerned itself, it shows 20 to 40 per cent sliding scale, isn't that right? A. Yes.

Q. Now, for the next year, for the year '50-'51 there are approximately 32 pictures that are played and with the exception of three pictures, which are each played for \$400, every single one of them is 20 to 40 per cent sliding scale, is that correct?

A. Yes, however, generally the increment change may be set up for a year because they are based on a basic figure and they were generally re-set up each

(Testimony of Edwin F. Zabel.)

year, depending on the different costs and the basic figures in each theatre.

Q. Depending on the expenses in the theatre?

A. Not necessarily expenses alone. It may have been based on an agreed figure.

Q. Not based upon the value of the picture though? A. No.

Q. Had nothing to do with the picture—it was just the expenses of the theatre?

A. Expenses or agreed figure on the theatre.

Q. All right. Now, I want to show you Plaintiff's Exhibit 47-A-3, which is the Guild Theatre, and call your attention that there were approximately 25 pictures played—less than that, I think probably about 20 pictures played at [313] the Guild, and of those pictures all but three were played on the 40 to 20 per cent sliding scale, is that correct? A. So this statement says.

Q. All right.

Mr. Corinblit: Now, your Honor, I would like to offer into evidence at this time the Exhibit 47-A-1, which are the cut-off cards for Universal for the United Artists Theatre downtown.

The Court: Do we have an objection?

Mr. Johnston: I object to that on the ground it was not a Fox West Coast operation after 1947.

I don't know that this witness has any knowledge with regard to the terms of pictures negotiated for that theatre between Universal and United Artists Theatres Circuit.

That is the basis of my objection, your Honor.

(Testimony of Edwin F. Zabel.)

Mr. Corinblit: My answer is, your Honor, that these records are designed to show that there was an over-all arrangement as to terms.

Now, the record evidence shows that all of the Universal pictures played in a unit of theatres, four Fox theatres and United Artists Theatre downtown, so this evidence would tend to show and assist, I believe, in tending to show there was an over-all arrangement as to terms by looking at it collectively. If they don't vary, it doesn't make any sense. If there was any—— [314]

The Court: Objection overruled.

Q. (By Mr. Corinblit): Now, Mr. Zabel, the court having admitted——

The Court: It may be admitted in evidence, Exhibit 47-A-1.

(The exhibit referred to was marked Exhibit 47-A-1, and received in evidence.)

Q. (By Mr. Corinblit): I want to call your attention to the fact that, and ask you to confirm this, that for the period, for the season—these seem to be all in 1950—they are the same 901 group, approximately 23 pictures.

With the exception of two flat rentals, every picture is played on the 20 to 40 sliding scale at the United Artists Theatre, is that correct?

Mr. Johnston: You mean that is what the record shows. Is that what you are asking the witness?

Mr. Corinblit: Yes.

Mr. Johnston: Can't you read it as well as the witness?

(Testimony of Edwin F. Zabel.)

Mr. Corinblit: The court asked we have the witness verify the fact.

The Witness: That is what the record shows.

Q. (By Mr. Corinblit): And with respect to the 681 group, amounting to approximately 28 pictures for the '49-'50 season, with the exception of two pictures for \$600, all of the pictures are 20 to 40 per cent sliding scale, is that correct? [315]

A. That is what the record says.

Q. With respect to the 621 group, with the exception of two pictures, all of them are 20 to 40 sliding scale? I might point out there are a few—there is a 50 per cent provision over.

A. It looks like there are about four pictures with 50 per cent over.

Q. Other than that my statement is correct?

A. 20-40 per cent, yes, but some flat rentals.

Q. Of the flat rentals, there are two flat rentals—three of them and all of them at \$600.

Finally, with respect to group 101 to 136 they are 20 to 40 sliding scale with the exception of four which are flat rentals at \$600, and with the exception of one picture or maybe another picture in which the flat rentals—in which the sliding scale was changed to 25 per cent to 40 per cent instead of 20?

A. I think there are some in here that say 20 to 40—

Q. With the exception of one or two which say 25 to 40 and 50 per cent over, the terms are the same—20 to 40?

(Testimony of Edwin F. Zabel.)

Mr. Johnston: I didn't hear the remark of counsel.

Mr. Corinblit: With the exception of one or two which say 25 to 40 and 50 per cent over, the terms are the same—20 to 40.

The Witness: That says 25 to 40, and this one says 25 [316] to 40 and then there is 50-50 less second features.

Q. (By Mr. Corinblit): All right. Now, Mr. Zabel, in the light of these documents, isn't it a fact that you agreed with Universal on behalf of Fox, that you were to get all of their pictures for a long period of time and that the terms were 20 to 40 sliding scale. Isn't that what the agreement was?

A. No, that I don't think is the agreement. Mr. Scully asked for these theatres. He wanted to play his pictures in them and they were put on a sliding scale so they would find their own place as to what they were worth in each theatre and each theatre the sliding scale was set up, based on a basic figure, generally computed from the expense figures and that is how the sliding scale came up.

These sliding scales were changed most every year.

Now, I don't know whether Universal sold other people on a sliding scale. Apparently they did.

I know other companies did sell other customers on the same type of scale.

Mr. Corinblit: I move to strike that portion of the answer.

(Testimony of Edwin F. Zabel.)

The Witness: So we negotiated and bought each picture separately.

The Court: It may go out. But in Los Angeles Universal didn't sell any other customer first run, did they? They [317] sold—may have sold customers outside of Los Angeles first run, but in Los Angeles they did not.

The Witness: I think they sold during this period—I believe they sold most of their pictures to us. I would have to check it.

The Court: I thought you said a little while ago you got them all.

The Witness: Well, I think we did, your Honor. I don't know for sure. I didn't see a record.

Mr. Mitchell: Your Honor, he asked what the arrangement was and Mr. Zabel was explaining the arrangement. Do you want to deprive him of answering the question?

He doesn't have to accept Mr. Corinblit's arrangement. He is trying to explain what the arrangement was with Universal and now you have stricken what he said the arrangement was.

The Court: No, I haven't.

Mr. Mitchell: You said something about "It may go out."

Mr. Corinblit: What that referred to, your Honor, was a statement that other theatres—

The Court: He was talking about other theatres. I assumed he was talking about other theatres outside of the Los Angeles area.

Mr. Mitchell: That is what you had in mind?

(Testimony of Edwin F. Zabel.)

The Court: That is all. [318]

Mr. Corinblit: That is all I asked for.

The Court: We have broken the trend of thought here.

I want this witness to tell us how this 20 to 40 per cent sliding scale worked and what is meant by 50 per cent over.

This jury has never heard these terms before.

Mr. Corinblit: Yes, I think that would be a good idea.

Let us see if we can set it up in a simple way, Mr. Zabel.

If you will pardon my back, I am left-handed.

This 20 to 40 per cent sliding scale in a simple way, if you were looking at it, would read something like this, wouldn't it.

Up to X dollars 20 per cent.

Now, this X dollars is gross. Then from that figure up to another figure, 21 per cent; from that figure up to another figure, 22 per cent; from that figure up to another figure 23 per cent; and then when you got all the way down to 40 per cent here, the agreement would be that gross receipts over this figure would be shared 50-50. Isn't that a simple way of explaining it?

The Witness: It is not quite correct. [319]

Q. All right. You correct me where I was incorrect.

A. That the gross figure, in certain gross figures, it would be 20 per cent.

Q. All right.

(Testimony of Edwin F. Zabel.)

A. But if it hit a higher gross figure, then it would be 21 per cent back to the first dollar. In other words, 21 per cent of the gross and then up to 40 per cent. If the 40 per cent figure was reached, they would get 40 per cent of the gross back to the first dollar and it would be 50 per cent over that 40 per cent figure.

Q. Then to restate that for the jury, Mr. Zabel—

A. The minimum that the film company could get would be 20 per cent. If the gross went up to the— say it was \$100, just for an example, the 20 per cent figure, say 23 per cent figure—make it easier—it is \$230. Then they would get 23 per cent at 230 from the first dollar. If you grossed 230, they would get 23 per cent of the 230.

If the 40 per cent figure, say, was \$400, then they would get 40 per cent of the gross if the gross grossed \$400.

Now, I perhaps better explain how we compute this. We divide the week up into 10/10ths. There are seven days, but we divide it up into 10/10ths for the week, because your gross on Sunday, we always compute as being 3/10ths, and on Saturday 2/10ths, and each other day of the week 1/10th, which totals 10. so if they played a picture Thursday, Friday and [320] Saturday, that would be 4/10ths, so if that picture on those three days grossed \$400, the film company would get 40 per cent of that gross. In other words, 4/10ths would be \$1,600, and they would get 40 per cent of the \$1600 for film rental.

(Testimony of Edwin F. Zabel.)

If it went over the 40 per cent figure, then they would get 50 per cent of every dollar in excess of \$1,600.

Q. Now, Mr. Zabel—

The Court: Just a minute. Then I understand in the sliding scale schedule, the maximum that the distributor would get would be 40 per cent.

The Witness: No. He would get 50 per cent of everything in excess of the 40 per cent figure.

The Court: The maximum he could get then would be 50 per cent.

The Witness: No, he wouldn't get 50 per cent total. He would get 40 per cent up to the 40 per cent figure, and 50 per cent of everything over that.

Mr. Mitchell: There is one other thing that I think should be made clear. There is a variable which has to be negotiated for either picture by picture or year by year or on some other time. There is a variable on that blank line there.

The Witness: Yes, that is true. You start with a basic figure generally computed—well, it isn't necessarily [321] the expense figure. It takes into consideration an estimated cost in that figure and then you apply a formula which gives the theatre a percentage of profit at each increment.

At 22 per cent they get a certain profit. At 23 per cent they get a little more, on up to 40 per cent. This figure is negotiated and, therefore, each increment could be different on each picture. Some pictures we had a 25 per cent minimum instead of a 20 per cent minimum.

(Testimony of Edwin F. Zabel.)

The Court: What do you mean by 50 per cent over? What do you mean by that?

The Witness: If that figure was \$400 at 40 per cent, any gross over \$400 was split 50-50, 50 per cent to the theatre and 50 per cent to the distributor.

The Court: Is that what you mean by 50 per cent over?

The Witness: Yes.

Q. (By Mr. Corinblit): This figure, 20 to 40 per cent sliding scale, Mr. Zabel, as indicated by the contracts I read to you, was fixed, wasn't it, with rare exceptions, on all Universal pictures? Virtually every single Universal picture in those Fox houses, with the rarest exception, was fixed at a 20 to 40 per cent sliding scale, isn't that right?

A. I think that scale was 20 to 40 per cent from what I saw in the paper here.

Q. The figure that you say was negotiated from time to [322] time is the figure on this side of the ledger, isn't that right?

A. Yes, the basic figure.

Q. That basic figure is a figure which reflects the house expense and some other variables, isn't that right?

A. Yes, generally a negotiated figure.

Q. And it is not changed as far as the value of the picture is concerned? It has nothing to do with that, has it?

A. No.

The Court: Mr. Corinblit, I notice it is nearly 11:00 o'clock.

(Testimony of Edwin F. Zabel.)

Mr. Corinblit: All right.

The Court: Maybe we better take our morning recess now.

Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone and you are not to allow anyone to discuss it with you, you are not to express any opinion and you are not to formulate any opinion until this case has been finally submitted to you.

With that admonition, we will now recess until 15 minutes after 11:00.

(Recess.)

The Court: Is it stipulated the jury is present in the box?

Mr. Corinblit: So stipulated. [323]

Mr. Johnston: So stipulated.

The Court: You may proceed.

Q. (By Mr. Corinblit): Just a few more questions, Mr. Zabel, about this matter here. This part of the formula, I think you testified this 20 to 40 was fixed, and I wanted to talk about the other part of the formula. I think you have testified that that part of the formula was not affected by the value of the picture. What it was affected by was something like the expense of the house. In other words, if at the beginning of the year No. 1 the expense of the Ritz Theatre was so many dollars, and if some time during the period the expense of the Ritz went up, or this other figure in there, not expense, but some other figure went up, then you would negotiate that

(Testimony of Edwin F. Zabel.)

with the film companies and a new figure would be arrived at, is that right?

A. Yes. It could go up or down.

Q. Up or down. If the expense of the Ritz Theatre went down, a new figure would be arrived at, is that right?

A. They may add a matinee or something like that. That could cause the figure to be changed.

Q. But would it have to be a pretty important change in the expense figure before you would make a change?

A. I would say yes. If there was only a few dollars difference, there wouldn't be a change made, but it was changed periodically, and also at times if there was something [324] that created an additional expense, generally a matinee, where there hadn't been matinees played before, or something like that.

Q. In other words, if the wages in the theatre went up, you would make an adjustment in the scale, or if the wages went down, you would make an adjustment.

A. Yes.

Q. If some expenses in the theatre went up, you would make an adjustment, or if they went down?

A. Yes.

Mr. Corinblit: I have no further questions. Well, I beg your pardon. There is one other line of questions.

Q. Mr. Pirosh was in immediate charge of what theatres, or what group of theatres, as far as han-

(Testimony of Edwin F. Zabel.)

dling the purchasing of pictures was concerned in 1949?

A. I believe in 1949 Mr. Pirosh was in charge of bidding situations.

Q. Also, as far as having authority to discuss the purchasing of pictures with the film companies and with perhaps other theatre owners, he had that authority under you, didn't he?

A. He had the right to buy the pictures, full authority to buy pictures, negotiate for the deals and licensing of pictures with the distributors.

Q. And if, for example, someone from the United Artists [325] Theatres Circuit, Inc., came in to discuss with him the general policy as between those theatres and Fox, he had the authority to work that out, didn't he?

A. I don't know whether he had that or not.

Q. But if he did it, he had the authority to do it? I am not asking you whether he did it.

A. He had authority to go ahead and buy pictures and set the terms.

Q. My question is, if there would be a discussion between him and the United Artists Theatre Circuit about matters of policy with respect to pictures, he had the authority to make that decision?

A. What kind of matters?

Q. Well, for example, he had the authority to agree with United Artists Circuit, Inc., that he would not try to prevent them from getting Loew's pictures first run or Loew's pictures on any run?

(Testimony of Edwin F. Zabel.)

A. No, I don't think he had authority to do that. I don't know whether he would do it or not.

Q. You don't know whether he would do it or not?

A. No. Nobody gave him authority to do anything like that.

Q. But he did have authority to discuss the matter, I take it?

A. Oh, he can discuss anything he wants, as far as I [326] know.

Q. And he was in charge of—well, I will withdraw that.

Mr. Corinblit: I have no further questions of Mr. Zabel at this time.

Cross Examination

Q. (By Mr. Johnston): Now, Mr. Zabel, referring to this so-called sliding scale, it is true, is it not, that the actual dollars paid to Universal from the exhibition of pictures on a sliding scale would vary with respect to the picture and with respect to the gross that it did in a particular theatre, isn't that correct? A. Yes.

Q. Now, with respect to this sliding scale, at the time you negotiated for Universal pictures—I am referring to the years 1950 and 1951—did you negotiate with Universal as to each picture, as to whether it would be licensed on a sliding scale or on some other form or terms of license agreement?

A. Yes.

Q. Now, yesterday, Mr. Corinblit asked you

(Testimony of Edwin F. Zabel.)

some questions about the Fanchon & Marco case and showed you a part of the transcript in that case. When was that case tried, to [327] your knowledge, Mr. Zabel? A. I believe in 1951.

Q. When was the decision of Judge Yankwich and the findings of Judge Yankwich made in that case, Mr. Zabel?

Mr. Corinblit: I object to that.

The Witness: 1951.

Mr. Corinblit: Just a minute. I object.

The Court: Overruled. I don't know what the purpose is, but I can't rule whether it is material or not.

Mr. Corinblit: All right.

Q. (By Mr. Johnston): Now, in 1951, Mr. Zabel, you had occasion to and you did look at the opinion and the findings in that case of Fanchon & Marco vs. Paramount Pictures, did you not?

A. Yes, sir.

Mr. Corinblit: I object to that and move to strike the answer.

The Court: Overruled. He has testified he looked at it. I don't know what for, but he looked at it.

Q. (By Mr. Johnston): And included among the findings you looked at is one I am going to show you now, which is Finding 11-E.

The Court: Just read it to yourself and don't answer the next question, because I anticipate an objection.

Q. (By Mr. Johnston): It starts at page 183.

A. Yes.

(Testimony of Edwin F. Zabel.)

Q. Now, Mr. Zabel, calling your attention to the year 1951, you have testified in response to a question by Mr. Corinblit that the Universal pictures were licensed in certain Fox theatres all through that year, and I believe you named those theatres, if I remember correctly, to be the Iris, the Guild, and later the Vogue on Hollywood Boulevard, the Studio in Studio City, the Ritz on Wilshire Boulevard, and the Culver in Culver City, is that not correct? A. Yes.

Q. Now, with regard to the manner in which you licensed, or I should say played the Universal pictures in those theatres in 1951, was it your intent in doing so to do what Judge Yankwich said was reasonable to do in the Fanchon & Marco case?

Mr. Corinblit: I object to that, your Honor.

The Court: Sustained.

Mr. Johnston: What is the ground of the objection, Mr. Corinblit?

Mr. Corinblit: The ground of the objection is that it calls for a conclusion of the witness, that it is immaterial, irrelevant, prejudicial, and will lead to prejudicial evidence, and it has no bearing whatsoever on this case. [329]

Mr. Johnston: May I be heard on that, your Honor?

The Court: Referring to a finding made by another court in another case?

Mr. Johnston: I haven't sought to do that yet, your Honor.

The Court: But you are asking this witness if he

(Testimony of Edwin F. Zabel.)

relied upon that finding and if he says "yes" the question is what finding was he relying upon.

Mr. Johnston: If there is a lack of foundation I will be glad to put the finding in as evidence.

The Court: No, I don't think you can put a finding in, can you?

Mr. Johnston: I think I can, your Honor, and it goes to this issue.

Mr. Corinblit has raised the point that it was the intent of Fox West Coast to restrain competition and to monopolize the exhibition of motion pictures.

Now, if the reason why they pursued, and I am speaking of Fox West Coast, a certain course of playing motion pictures was because Judge Yankwich told them they could do so, I think then that intent and state of mind is very material in this case.

The Court: Let me look at the finding.

Mr. Johnston: Certainly. It starts at the check mark, your Honor, on page 183. [330]

(Handing document to the court.)

The Court: When was this finding made?

Mr. Johnston: The findings are dated, I think, November 7. I am not sure of the date but I think November 7, 1951, your Honor.

Mr. Corinblit: Your Honor, the damage period here ends September 1951.

The Court: Well, how could this finding affect this case?

Mr. Johnston: It can in this respect: Mr. Corinblit, and I assume that was the purpose of his testi-

(Testimony of Edwin F. Zabel.)

mony, sought to impugn the motives and intent of Fox West Coast in exhibiting Universal pictures in the way it did all through the year 1951. In yesterday's examination of Mr. Zabel he did not limit himself to that.

The Court: Your question was, Mr. Johnston, did he try to follow the directions as made in the findings.

The findings were made after the damage period.

Mr. Johnston: That may be true, your Honor. I am not talking about that. I will come to that in a moment.

I am talking about Mr. Corinblit's question put to this witness yesterday which were not restricted to 1951. They were not restricted to the period ending September 1951.

His question was directed to the entire year of 1951. And I might say too, further in this case, your Honor, that [331] you will note from an examination of the pleadings that a supplemental complaint was filed in this matter in January 1952 and I submit timewise——

The Court: Supplemental complaint?

Mr. Johnston: Yes, a supplemental complaint.

The Court: I thought we had an amended complaint.

Mr. Corinblit: Yes, we did. It was an amended complaint.

Mr. Johnston: It may have been an amended complaint or a supplemental complaint.

(Testimony of Edwin F. Zabel.)

The Court: I thought we were trying the case on an amended complaint.

Mr. Johnston: Then let us call it amended or supplemental, but in any event that pleading was filed in January of 1952.

The Court: It didn't extend the period of damage.

Mr. Johnston: That may very well be true.

The Court: Now, Mr. Johnston, just a moment. My understanding of the question was, Mr. Johnston, and maybe you had better rephrase the question—my understanding was whether or not this witness had relied upon this finding.

Mr. Johnston: That is correct.

The Court: Then I will sustain the objection.

Mr. Johnston: May I make an offer of proof?

The Court: Well, if you are going to make an offer of proof I don't think it should be done in the presence of the [332] jury.

Mr. Johnston: That is satisfactory. I will make it in any way the court desires.

The Court: Well, can you hold your offer of proof for about 30 minutes?

Mr. Johnston: I will be glad to if I don't waive any rights in so doing.

The Court: You won't waive any rights. You just hold your offer of proof until the noon recess and after we excuse the jury we will let you make your offer of proof.

Mr. Johnston: Thank you, sir. I have no further questions at this time.

(Testimony of Edwin F. Zabel.)

Cross Examination

Q. (By Mr. Mitchell): Mr. Zabel, when you and Mr. Scully——

The Court: Will you use the lectern, please? It is pretty hard to look across this way.

Mr. Mitchell: Certainly.

Q. (By Mr. Mitchell): When you and Mr. Scully had your discussion in 1946 and Mr. Scully asked you if you would make some theatres available for the playing of Universal pictures, did he ask you to make those theatres available for any length of time? A. No. [333]

Q. Did you ask him to furnish Universal pictures to such theatres as you might make available for any length of time? A. No.

Q. Or was any such arrangement made at a later date? A. No, there was not.

Q. So that any time Mr. Scully or Universal wanted to stop furnishing pictures to your theatre or any time you wanted to stop licensing Universal pictures in your theatre, there was nothing in your arrangement with Scully that prevented that?

A. No, sir.

Q. Now, with respect to the operation of this sliding scale. A picture called *Sword of the Desert* played in the Ritz Theatre, is that right?

A. Yes.

Q. On this so-called 40-20 sliding scale?

A. Yes.

Q. And what film rental did you receive?

(Testimony of Edwin F. Zabel.)

A. We paid 34 per cent or \$3483.

Q. All right. Now, that same picture *Sword of the Desert*, played in the United Artists Theatre downtown on the same 40-20 sliding scale and according to this record what film rental was paid by the United Artists Theatre?

A. 34 per cent or \$4677. [334]

Q. So with this 20-40 sliding scale it resulted in varying film rentals? A. Yes.

Q. Now, take another picture in the Ritz, take *One Step*, which played during this same period of time.

The Ritz Theatre played that on a 40-20 basis and what film rental did it pay?

A. 20 per cent—\$772.67.

Q. So that the sliding scale of 40-20 per cent results in still a different film rental?

A. Yes.

Q. And you say the determination as to whether this sliding scale would be used or some other increment would be used, or whether no sliding scale would be used, was determined for each picture for each theatre? A. Yes, sir.

Q. That is all. [335]

* * * * *

Mr. Corinblit: I will call Mr. Bertero.

JOHN B. BERTERO

called as a witness by the plaintiff under Rule 43(b) of the Federal Rules of Civil Procedure, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: John B. Bertero, B-e-r-t-e-r-o.

Direct Examination

Q. (By Mr. Corinblit): By whom are you employed?

A. I am the president of Fox West Coast Theatres Corporation.

Q. How long have you had that position?

A. Since November 1954.

Q. You are also an attorney-at-law?

A. I am.

Q. How long have you been employed by Fox West Coast Theatres Corporation?

A. Since its incorporation in 1933.

Q. Are you also an officer of the corporation known as National Theatres, Inc.?

A. Yes. That company owns all the stock of Fox West Coast Theatres Corporation. I am a vice president and counsel [341] for National Theatres, Inc.

Q. National Theatres, Inc., is the successor, is it, to National Theatres Corporation, the defendant in this case?

A. National Theatres, Inc., acquired indirectly all the shares—I think it was directly—shares of

(Testimony of John B. Bertero.)

National Theatres Corporation—is that the name of the defendant?

Q. Yes.

A. In September of 1952, and indirectly acquired all the assets formerly owned by National Theatres Corporation.

Q. Prior to National Theatres Corporation transferring or causing its assets or stock to go to the new corporation, National Theatres, Inc., is that a correct statement? Prior to that time were you an officer of National Theatres Corporation, the defendant in this case?

A. I became an officer of National Theatres Corporation in September of 1952, and I remained an officer, vice president of the company, and its counsel, until the dissolution of the National Theatres Corporation in September 1953.

Q. How long were you employed by the defendant National Theatres Corporation?

A. I was a vice president and counsel for the company for approximately one year from September of 1952 to September 1953, when it was dissolved.

Q. For what period of time had you been performing services for National Theatres Corporation? [342]

A. During the period, oh, from about 1930 until the dissolution of the company, I sporadically on occasions performed services.

Q. With respect to the defendant Fox West Coast Theatres Corporation—

(Testimony of John B. Bertero.)

A. These were legal services. I acted as attorney for the company, I might explain that, during the period.

Q. For National Theatres Corporation?

A. Yes, on a number of occasions throughout a period of about, let's see, 20 odd years, I undertook legal matters for the company.

Q. As far as Fox West Coast Theatres Corporation, the defendant, what services have you performed for Fox West Coast Theatres Corporation since you were employed by them?

A. I became assistant secretary of the company in 1933, and mainly engaged in legal activities for four or five years. Then got involved in financial and real estate matters, corporate matters. Became a vice president of the company in 1942, June 1942. I continued in that capacity until I became the president of the company in November 1954.

Q. In connection with your duties, you had occasion to consult with the buyers and operators of the Fox West Coast Theatres in this area about the matter of runs and clearances, isn't that right?

A. Yes. [343]

Q. You were aware of any contractual arrangements between Fox and the suppliers of film with respect to the availability of pictures for the Los Angeles area, is that right?

A. Throughout the years, I was generally familiar with them, but in late years—it was very difficult to bear that in mind, and so I have lost track of them since about 1947 and 1948.

(Testimony of John B. Bertero.)

Q. You were certainly directly aware of and directly responsible for relationships between Fox and other theatre owners in the L. A. area insofar as they were joint interests between you and other theatre owners.

A. You will have to explain that to me, what you mean. I don't know.

Q. If, for example, Fox West Coast and United Artists Theatres Circuit had a joint interest in some theatres, you knew all about that?

A. Well, that is giving me a lot of credit. In reference to the matter you speak of, we had a corporation in which we owned 70 per cent of the shares, Fox West Coast Theatre Corporation owned 70 per cent, and a company known as United Artists Theatres of California, Ltd., which I understood to be a subsidiary of United Artists Theatres Circuit, owned 30 per cent of the shares, and obviously I was somewhat familiar with the workings of that corporation. In my day-to-day routine affairs I had to learn quite a bit about it, but I [344] can't say I knew all about it or carried it all in mind.

Q. In 1949, what were the theatre interests that you, Fox West Coast, and this corporation you have named, United Artists Theatres, had jointly in 1949, beginning early, in January 1949?

A. What do you mean what were the theatre interests? You want me to name all the theatres?

Q. No. How many theatres were there jointly owned?

A. Now, wait a minute. Let's don't talk about

(Testimony of John B. Bertero.)

jointly owned. I tried to explain. United West Coast Theatres Corporation operated a group of theatres. 70 per cent of the shares of that company were owned by Fox West Coast Theatres Corporation, and 30 per cent by United Artists Theatres of California, Ltd. That corporation operated a group of theatres extending throughout the state of California. My present recollection is that at one time, I think in 1949, they totalled about 55 theatres operated throughout the state.

Q. I wonder if we could just quickly locate some of these theatres in this area so that the jury will understand what we are talking about. Looking first at the Hollywood area, what theatres did that company own—that is, in what theatre on Hollywood Boulevard did you and the United Artists Theatres Circuit have a joint interest through this corporation?

A. Mr. Corinblit, you keep using the words joint interest [345] in an invidious sense, and I am trying to convey to the jury the exact fact. Let's talk about the operation of United West Coast Theatre Corporation and I think we will keep on common ground, at least when I say we operated, I mean that company operated.

On Hollywood Boulevard, the United West Coast Theatres Corporation operated the Egyptian Theatre.

Q. And in down town Los Angeles, were there any theatres?

(Testimony of John B. Bertero.)

A. In 1949, according to my recollection, it operated no theatre.

Q. Now, in the Wilshire area?

A. It operated the Four Star Theatre on Wilshire Boulevard.

Q. The Four Star. Next?

A. Wait a minute. Until the end of 1949 it had a stock interest in a theatre known as the El Rey on Wilshire Boulevard.

Q. All right. In the area between Wilshire and Hollywood Boulevard, what other theatre? Were there any other theatres in the group?

A. Could I come down to the map?

Q. Surely.

(Witness leaving stand.)

A. If you will delineate the area, I will pick out the [346] theatres which it operated.

Q. Yes, sir. I have lost the pointer. You might stand on this side, Mr. Bertero. I will give you a pencil, if you want to use that.

A. I want you to delineate the area you are speaking of.

Q. Yes. I want to stand back here so the jury can watch you. In the area between Wilshire Boulevard and Hollywood Boulevard in Los Angeles, will you designate the theatres, if any.

A. What length on Wilshire Boulevard? Give me a square or rectangle, if you have in mind some area.

Q. In this area from Wilshire Boulevard run-

(Testimony of John B. Bertero.)

ning from Beverly Hills to downtown up to Hollywood Boulevard, what were the theatres, if any?

A. I mentioned the El Rey already. I mentioned the Four Star on Wilshire Boulevard. It had an interest in the Fairfax Theatre over on Beverly Boulevard. My present recollection is it had no other theatres in the area.

Q. Now, in the Inglewood area, would you designate the theatres that were operated by this corporation that you described?

A. Until December 1949, it operated the Fox—I may be in error on that. I think there was a period of about a year when it didn't have an interest in the Fox and that may have [347] been 1949. I am not certain. The Academy, the United Artists and the Inglewood Theatre.

Q. Would you point those theatres out?

A. It is difficult to point them out. It would be pointless.

Q. Point the Academy out. It is not in the group there. It is out here, isn't it?

A. The Academy and Inglewood, Fox, United Artists. These are in downtown Inglewood, and the Academy is, as I remember, about a mile and a half or two miles from downtown Inglewood.

Q. The Academy in 1949 you would describe as a 7 day house, isn't that right, generally licensed on 7 day availability?

A. I think that is right, but I am not sure.

Q. What other 7 day houses did you have in 1949 operated by the same company?

(Testimony of John B. Bertero.)

A. What is the area you are speaking of? I can take a large area or a small area.

Q. What I have reference to is the entire map, but I can go through them one by one. What did you have with respect to the Pasadena area?

Mr. Mitchell: Object as immaterial.

The Court: What difference does it make? They have stipulated they owned a large number of theatres. [348]

Mr. Corinblit: Yes, your Honor. The only purpose was to delineate in that area indicated on the map those theatres being jointly operated by this company, because there are arrangements that were made subsequently that related to those. I think it will take only a moment, if your Honor feels we can carry it through. [349]

The Court: Overruled.

The Witness: In the Pasadena area, to which Mr. Corinblit referred, the distributors customarily licensed a 7-day availability and our competitor, the Crown Theatre was licensed 14 days on certain pictures, and the Academy licensed——

Mr. Mitchell: Is this question directed to Fox West Coast for United Artists?

Mr. Corinblit: United West Coast in which they had an interest. I am going to move to strike the answer of Mr. Bertero to the last question.

The Court: I think it had better go out along with the question. I don't think the reporter got the question so we will start all over.

Q. (By Mr. Corinblit: What were the theatres

(Testimony of John B. Bertero.)

of the United *States* West Coast Theatres — what were the theatres operated by the United West Coast Theatres in Pasadena?

A. It operated the Academy Theatre.

Q. Yes, the Academy.

A. I believe also the Strand.

Q. The Strand. And what else?

A. I think the Pasadena was closed at that time, but it may have been operating. At least there was a lease on the theater. Whether it was closed or operating, I don't know. [350]

Q. All right, is that all?

A. And the State Theatre in Pasadena.

Q. All right. Now, what theatres did they have in other areas including the Glendale area?

A. United West Coast Theatres Corporation operated the Capitol Theatre in Glendale and the California Glendale.

Q. Yes.

A. The name of the California may have been changed. I don't recall.

Q. And it also operated in some theatres in the Belvedere Gardens area?

A. It operated one theatre in Belvedere Gardens, namely, United Artists and it had an interest in a theatre called the Golden Gate.

Q. It also may have had the Royale?

A. Yes. It may also have operated the Royale, if it appears on the map. It may have been closed at the time because of business condition.

Q. All right. Now, finally—I don't know that

(Testimony of John B. Bertero.)

this is final, but you had some interest in theatres at Long Beach?

A. United West Coast Theatres Corporation operated possibly five theatres in Long Beach.

Q. Would you name them?

A. The West Coast, the Imperial, the Egyptian, the [351] United Artists.

Those are the principal theatres. And also the Long Beach Theatre. It had an interest in the Long Beach Theatre in Long Beach.

Q. Now, unless you can't recall we have just—we have enumerated substantially all of the theatres that would be indicated on this map which were operated by United West Coast?

A. That is a memory test. I think so, Mr. Corinblit.

Q. Now, in 1949 the Fox West Coast and National Theatre Corporation were negotiating a termination of the joint—well, I will withdraw that question.

They were negotiating leading to the termination of the interests that United Artists Theatre Circuits had in United West Coast Theatres Corporation, is that correct?

A. Well, in 1949 we, as the owners of 70 per cent of the stock and we, meaning West Coast Theatres Corporation, negotiated with the owners of the other 30 per cent to terminate our respective interests on some basis, and exchange in effect stock for theatres.

Q. When did those negotiations begin?

(Testimony of John B. Bertero.)

A. About, I would say, the spring of 1948 they first became serious and the negotiations extended from about the spring of 1948 until the parties came to an agreement.

Q. And when was that? [352]

A. Oh, I think the papers were signed probably in about the fall of 1949.

Q. Now, were all of the interests—did the interests of that corporation in some theatre last any longer than November of '49?

A. Well, this was a rather large business deal and one of the big problems in it was we wanted to acquire full ownership of the Chinese Theatre, which is a very important theatre, and as I remember, if you are asking about the termination date of it, we signed the papers probably in, I believe in about November of 1949. But obviously with so many legal complexities and business complexities, I think we provided for a termination date on January 1, 1950.

There was an exchange of theatres. We acquired the Chinese and we traded in several of our theatres that we owned up north, and there might have been a spill-over period in adjusting to the accounts, but as I recall the accounts provided for a break-off date of January 1st of 1950.

Q. After January 1, 1950, you didn't operate any theatre in which United Artists Theatre Circuit had an interest?

A. Well, generally the answer is no. As I say there might have been a spill-over date.

(Testimony of John B. Bertero.)

Yesterday I learned that the escrow on the deal— [353] we handled it through the title company because of the importance of the matter, that the closing at the title company where deeds were exchanged and leases terminated and cash paid back and forth, that that was on January 16th.

Now, it is conceivable that the company operated for a few days longer or maybe a month or two longer but the final adjustments as I recall were to be made retroactive to January 1st of 1950.

Q. How long in 1950 did you continue to operate?

A. I don't think probably more than two weeks or four weeks—whatever it took to conclude this transaction.

Mr. Corinblit: Your Honor, I notice it is 12:00 o'clock.

The Court: Ladies and gentlemen of the jury, you are about to be excused and again it is my duty to admonish you that you are not to discuss this case with anyone. You are not to permit anyone to discuss it with you and you are not to formulate or express any opinion as to the rights of the parties in this trial until the case has been finally submitted to you. With that admonition you will be excused until 2:00 o'clock this afternoon. Will you kindly retire quietly as the court is still in session.

(The following proceedings were had in the absence of the jury):

The Court: Now, Mr. Johnston, you may make your offer of proof. [354]

Mr. Johnston: I seem to have misplaced the finding.

The Court: I have it.

Mr. Johnston: Oh, I beg your pardon. Thank you, sir.

Your Honor, at this time I make an offer of proof.

I offer to prove through the testimony of the witness Zabel, that it was the intent of the defendant Fox West Coast in 1951, in the playing of pictures, playing of Universal pictures in these theatres, the Iris, Guild, Vogue, Culver City, Studio and other theatres that he may have described as playing Universal pictures, it was the intent of Fox West Coast to do what Judge Yankwich said was reasonable to do in the case of Fanchon & Marco versus Paramount Pictures, et al, pursuant to finding 11(e) in that case, which I shall now read into the record: [355]

“Universal generally follows the practice of licensing the Los Angeles area first run exhibition of its pictures to theatres in the downtown Los Angeles, Hollywood and Wilshire districts and in Culver City and the Universal City section of the San Fernando Valley. Universal usually limits such first run exhibition of its pictures to the United Artists Theatre in the downtown Los Angeles district, the Iris and Guild Theatres and the Vogue Theatre in the Hollywood district, the Ritz Theatre in the Wilshire district, the Culver Theatre in Culver City, and the Studio City Theatre in the Uni-

versal City section of the San Fernando Valley. All such action by Universal is reasonable.”

I make this offer, your Honor, to negate the assertion by plaintiff in this action that the intent of Fox in so playing Universal pictures was to restrain competition and to exercise a monopoly of exhibition.

That completes my offer, your Honor.

The Court: Mr. Johnston, according to the transcript that is dated November 1, 1951.

Mr. Johnston: I think November 7.

The Court: Now, how could this witness say that he intended to follow that admonition or directive in September of 1950 and the first part of 1951, when it wasn't even in [356] existence?

Mr. Johnston: That may be true, your Honor. I shall come to that in a moment. But let me say what I perhaps ineffectively said when the jury was here.

Mr. Corinblit introduced evidence yesterday of the exhibition of Universal product in certain theatres not confined to the period ending September, 1951, but throughout the whole year, and questioned Mr. Zabel extensively on that.

He also put in an exhibit which didn't cover the period ending September, 1951 but going completely to the end of the year with respect to the exhibition of Universal pictures.

The Court: Mr. Johnston, your question is, “Did you intend to rely on this?” or “Did you try to rely on it?” when it wasn't even in existence. That is my objection.

Mr. Johnston: I understand the court's position. I think the court, perhaps, doesn't understand my position.

I am speaking—at the moment I am talking about an assertion which was made here that the exhibition of Universal pictures in certain Fox theatres throughout the year 1951—that evidence has gone in. And through that I believe it is plaintiff's position that the intent throughout the year was to restrain competition and to exercise monopoly power.

The Court: Well, I am going to instruct the jury at the proper time that they are only concerned with the period from September '50 to September, '51. They are not to consider any [357] damage that occurred after September, 1951.

Mr. Johnston: I might say further, your Honor, that I can offer, and I do offer to prove by this witness, Mr. Zabel, that evidence of the exhibition of Universal product in Fox theatres was given in the Fanchon and Marco case, the same evidence that has been, of course—it is essentially the same evidence that has been given in this action.

The judge in that case rendered his decision in August of 1951 in favor of the defendant Fox West Coast, and in fact in favor of all the defendants.

The Court: Well, I don't think there is a judgment until it has been written and signed and filed by the court. He might change his mind from the time he tried the case until the time he signed the judgment.

Mr. Johnston: That could be, conceivably, legal-

istically true, your Honor, but if a court renders a comprehensive opinion, certainly if people who were parties to that action guide themselves by that opinion, and their intent to perform or do certain things pursuant to that opinion——

The Court: Where is that opinion? Was there an opinion?

Mr. Johnston: Yes, your Honor.

The Court: What was the date of the opinion?

Mr. Johnston: August 7, I believe, 1951. I will give that to you in just a moment. It was sometime in August— [358] August 17, 1951.

The Court: Well, that was just two weeks before the end of the damage period here.

Mr. Johnston: That is true.

The Court: Then how could the witness say he tried to follow the directive of Judge Yankwich eight months before the opinion was written?

Mr. Johnston: I didn't ask him that. I asked him if he tried to follow it after the directive and the mandate. Of course he could not follow it, your Honor, in advance of his knowing what the decision would be, but he could follow it after that decision was announced.

The Court: In other words, we have two weeks here——

Mr. Johnston: I don't know the precise date.

Mr. Westbrook: I think it is exactly a month.

Mr. Johnston: A little over a month.

The Court: Well, the middle of August to September.

Mr. Westbrook: The complaint was filed September 17th.

Mr. Johnston: Roughly a month.

The Court: Mr. Corinblit, what do you want to say?

Mr. Corinblit: Your Honor, it may be against our better interests to argue against this motion, because, if Mr. Johnston wants to get in these findings of fact of Judge Yankwich, entered in 1951, I suppose we ought to be able to show that these people knew they were violating the law by [359] putting in the Paramount findings, which were entered in 1950, and putting in the decree, the final decree in 1951, for that purpose, so it may be against our better interest to argue against this point.

I want to take these up one by one.

Mr. Johnston asserted that we put in a schedule up to 1951. The assertion is incorrect because the exhibit he referred to, Exhibit 46-A-5, which exhibit ends with September 20, 1951. So that first point is incorrect.

Secondly, he refers to an opinion of Judge Yankwich. Your Honor, there is no basis that I know of, no basis under which actions referred to, taken on the basis of an opinion by Judge Yankwich, could have changed the situation.

Mr. Mitchell induced Judge Yankwich to change his opinion by writing a letter and asking him to change his opinion, the opinion which he had filed, and that is in the record of the case. It is a letter which was filed—Mr. Mitchell wrote a letter and

told Judge Yankwich that he thought there were some——

Mr. Mitchell: Clerical errors.

Mr. Corinblit: ——that there were some matters——

The Court: Well, Judge Yankwich may have changed his opinion between the time of filing and the printing of it.

Mr. Corinblit: Yes.

Mr. Mitchell: Any day I can get Judge Yankwich to change an opinion, it is a new day. Those were clerical errors. [360]

Mr. Corinblit: Even Judge Yankwich's judgment wasn't final, because the plaintiff immediately appealed therefrom. It was on appeal for a year or two thereafter, even a petition in the Supreme Court of the United States. That is not a final decision on which anyone can rely, can take a position, besides the fact that there is nothing in the world to prevent Mr. Johnston from asking, except I think there might be some technical objections, to ask Mr. Zabel, "Now, what did you do when you were operating these theatres?" I think there might be some technical objections to that, but to relate the objection to the opinion of a judge, it seems to me, is remote from the issues and certainly there is no basis for it.

Mr. Johnston: Your Honor, perhaps I was in error as to the exhibit, the time period covered by the exhibit he refers to. If I am, I tender my apology both to the court and to Mr. Corinblit.

However, with respect to the actual testimony,

the questions put by Mr. Corinblit, I am reading from page 254 of yesterday's proceedings, and without reading the preliminaries and simply paraphrasing the testimony, Mr. Corinblit was inquiring about this Universal situation, and Mr. Corinblit said at line 16 of the page I have indicated:

"Q. And that continued through 1951?"

"A. Yes. [361]"

"Q. The time you are referring to was from 1946 to 1951, a five-year period?"

"A. That is correct. I think I am getting confused now because there are some different theatres here at the time but most of the time they were these five theatres."

I simply say in support of my position that Mr. Corinblit elicited from this witness testimony during the whole year 1951.

The Court: Mr. Johnston, if we didn't have a jury here, I would let this testimony come in and I would let the findings come in, because I would take the finding you have for what it is worth. The jury might consider it in a different light.

I have sustained the objection of the defendants so far relating to the findings in the Paramount case. If I allow the findings in one case to come in, why shouldn't I allow the findings in other cases to come in?

Are you willing to let this finding come in with the understanding that I will let the Paramount findings come in at the proper time?

Mr. Johnston: I think you are putting me in a rather unfair position with a deal of that charac-

ter, your Honor. I think you know what my answer would be.

The Court: Yes, I know what your answer would be. [362]

Mr. Johnston: I do say this. Perhaps I have not effectively stated my position. It isn't the findings per se that I want in evidence. It is what the state of mind of Fox West Coast was, what was their intent? Was it their intent to do something that the court, Judge Yankwich, said they couldn't do?

The Court: Can't I take that argument and say a finding in the Paramount case shows the intent of the defendants, what they did?

Mr. Johnston: No.

The Court: I don't know.

Mr. Johnston: No, your Honor, I see no connection.

The Court: I am afraid, Mr. Johnston, you are flirting with trouble.

Mr. Johnston: Well, I simply wish to urge at this time the position I have urged.

The Court: I think the best solution of this is to sustain the objection.

Mr. Johnston: Perhaps then this will work both ways.

Mr. Mitchell: Is there an intention, Mr. Corinblit, to put in the contract with respect to the termination of the Fox West Coast interests, whatever it is?

Mr. Corinblit: I haven't decided for sure on that.

Mr. Mitchell: That is going to be troublesome to

[363] discuss that in front of the jury, because that order is just full of U. S. against Paramount. I have a position on U. S. against Paramount which I have urged, and I don't want it to come in directly and I don't want it to come in indirectly through reading excerpts out of letters or agreements or orders or any other way.

Mr. Corinblit: Your Honor, on that I am aware——

Mr. Mitchell: It is difficult to discuss in front of the jury without just saying it, and so if he is going to introduce or offer such a paper, I think it should be done outside the presence of the jury.

Mr. Corinblit: I am aware of Mr. Mitchell's position, and I am aware of the questions that you have had and the tight rules of proof you have required prior to the admissibility of any portion of the Paramount case. I will adhere to that and I will not try to make use of the fact that the jury is present to avoid what I know are the proper procedures.

The Court: I noticed a little while ago that the defendants in cross examination, I thought was getting to the place where they were going to ask the reasons why theatres were transferred. If the defendants open the door as to why they were transferred and they bring in the Paramount case, then I will have to admit the Paramount case, so don't open the door.

Mr. Mitchell: Some of these witnesses, you know—— [364]

The Court: I know, but if you deliberately ask the question why, then I may say——

Mr. Mitchell: We won't open the door.

Mr. Johnston: We are not going to open the door, your Honor.

Mr. Corinblit: Your Honor, I don't want what I have said to militate against this point. I think, without regard to what may be your overall ruling on admitting the Paramount decree, which we hope to convince you that you should do, portions of it, with respect to various elements of the case, getting down to the narrow point of the transfer of theatres, and so forth, I think there may come a time when that will be directly material to some of the issues here. I don't mean to say it will not become material, but I will certainly not use the fact that the jury is present to get it in behind the door. I will come right out and say I think it is admissible and ask you to rule on it.

The Court: Mr. Corinblit, you know my stand in regard to this matter and I am quite sure you will recognize and pay attention to it.

Mr. Corinblit: Yes, sir.

The Court: Court will now stand in recess until 2:00 o'clock.

(A recess was taken to 2:00 o'clock, p.m.)

Thursday, July 12, 1956—2:00 P.M.

The Court: Is it stipulated the jury are present and in the jury box?

Mr. Corinblit: So stipulated.

The Court: You may proceed.

Mr. Corinblit: Mr. Bertero, will you take the stand.

JOHN B. BERTERO

resumed the stand, and testified further as follows:

Direct Examination

Q. (By Mr. Corinblit): Mr. Bertero, before the recess we were discussing the theatres that were owned or operated by United West Coast Theatres Corporation in which I think you testified that Fox had—Fox West Coast owned 70 per cent of the stock and the United Theatres Circuit directly or indirectly owned 30 per cent—United Artists Theatres Circuit. A. In 1949?

Q. Your company, Fox, and United Artists Theatres Circuit, Inc., were sharing the profits from the exhibition of Loew's pictures on first run in Hollywood, isn't that right? A. In 1949?

Q. Yes.

A. In 1949 United West Coast Theatres Corporation operated the Egyptian Theatre until about November of that year. Then I think it was the middle of November that we ceased our interest in it, and the Loew pictures were customarily licensed and exhibited at the Egyptian Theatre on Hollywood Boulevard first run Los Angeles, that is correct.

Q. And that exhibition was simultaneous with an exhibition downtown at the Los Angeles Theatre customarily? A. That is correct, yes.

Q. Now, in 1949 Fox, on behalf of its four theatres, was sharing with United Artists, with respect to their downtown theatre, the gross revenues on

(Testimony of John B. Bertero.)

first run to be realized from Universal pictures, isn't that right?

A. I would like the question repeated. I got lost there.

The Court: Read the question.

(Question read.)

The Witness: What four theatres are you speaking of, Mr. Corinblit?

Q. (By Mr. Corinblit): The four Fox theatres that were playing day and date with United Artists Theatre downtown. Those were the only theatres——

A. Wait a minute. Let us take them one by one, and then my memory will come back to me.

These apply to the Universal pictures?

Q. Yes.

A. Well, sitting here I remember—I recollect that Universal pictures customarily went for a period of time to two theatres on Hollywood Boulevard, the Iris, in which United West Coast had no interest whatsoever and in the Guild in which United West Coast had no interest. And then what were the other two theatres you had in mind?

Q. Culver and Ritz.

A. The Culver. United West Coast had no interest in it. That was a theatre of Fox West Coast and the Ritz, the Ritz was operated by United West Coast, so there was one instance of the four where United West Coast operated the theatre.

Q. So that with respect to the Ritz, as far as Universal pictures were concerned, the revenues

(Testimony of John B. Bertero.)

from first run was operated by United West Coast and therefore you were sharing the profits to be derived therefrom, from the United Theatre Circuit—that is as far as the Ritz was concerned?

A. The fact is United West Coast was operating the Ritz and any time it played a Universal picture, and if it showed a profit at the end of the year from the exhibition of all pictures at the Ritz Theatre, then to that extent there was profit in the United West Coast Theatres Corporation, and also to that extent United Artist Theatre Circuit through [368] a subsidiary owned a 30 per cent interest in the corporation. I think that is the fact and whatever conclusion you draw from it is your own.

Q. All right. Now, and of course I don't know if you testified, but of course it is a fact that the only other theatre that played Universal pictures first run at that time was United Artists Theatre downtown—that is played day and date with that group of theatres?

A. I can remember that Universal played its product downtown in the United Artists Theatre. We had no connection with that in 1949, none whatever.

Q. Those are the only group of theatres that had Universal pictures on first run?

A. The theatres we have mentioned, the two on Hollywood Boulevard, the Ritz, the Culver and the downtown United Artists Theatre in which we had no interest, exhibited Universal pictures first run ordinarily. [369]

(Testimony of John B. Bertero.)

Q. Now, turning back for a moment again to Loew's pictures, the sharing through United West Coast with United Artists Theatres Circuit of the profit to be derived from the exhibition of Loew's product first run in the Egyptian Theatre was by reason of a document known as the basic agreement, isn't that right, the contract between you and United Artists Theatres Circuit, Inc.?

A. If I understand what you mean, it was an agreement between Fox West Coast Theatres Corporation and United Artists Theatres of California, under which it was agreed a corporation would be formed and we would own 70 per cent of that stock and the other party 30 per cent, and we agreed to lease or sublease, as the case may be, certain of our theatres to this company, and the other party to the contract, the United Artists Theatres of California, Ltd., would lease certain theatres to that company.

Now, that company operated the Egyptian Theatre until about the middle of November, 1949, as I recall, and during that time the Egyptian Theatre, at least part of the time, was profitable, and to that extent United West Coast made a profit and the 30 per cent stockholder participated indirectly.

Q. Speaking with respect to Loew's product downtown during 1949, while Fox had the theatre—withdraw that.

Speaking with respect to the Los Angeles Theatre [370] downtown, which was the theatre downtown playing the Loew's product on first run in

(Testimony of John B. Bertero.)

1949, Fox had an interest in that theatre and also a separate interest in the profits, isn't that right?

A. I think in 1949 we owned the Los Angeles Theatre 100 per cent. I am not clear on that. It might have been a little later and it might have been a little earlier that we acquired a 100 per cent interest, but in any event we had an interest in the theatre, and we exhibited customarily until we were thrown out of the theatre—no. I beg your pardon.

We customarily exhibited the better Loew's pictures in the Los Angeles theatre downtown until at least November, 1949.

Q. I want to refresh your recollection as far as the date when you received a full interest in the theatre.

A. I will accept whatever you state. It was somewhere around 1949 or 1950. I can't recall.

Q. If I show to you an agreement with Metropolitan Theatres dated November 14, 1949, would that pin the date down?

A. It is very close to the date I had in mind. November, 1949?

Q. Yes.

A. I was pretty good on my recollection.

Q. Yes, you were. I just wanted to pin it down to the [371] part of the year.

A. Yes. We owned a very substantial interest in the Metropolitan Theatres Corporation and we enlarged our interest to 100 per cent, so we became

(Testimony of John B. Bertero.)

the full owners of the Los Angeles Theatre at that time.

Q. During the period prior to November, 1949, January to November, 1949, you had an interest in the Los Angeles Theatre indirectly through another corporation, did you not?

A. Yes. We owned the shares of the corporation, owned part of the shares.

Q. And you also had a 25 per cent interest in the profits of that theatre so long as it played Loew's product first run, isn't that right?

A. Not in 1949, according to my recollection, Mr. Corinblit. I think from about 1948 to 1949, and after that when we owned 100 per cent, I think our interest in the operation of the Los Angeles Theatre was through this subsidiary company and was solely our stock interest.

Mr. Corinblit: I will ask the clerk to mark as plaintiff's exhibit next in order an agreement, copy of a letter agreement, a copy of which we have just obtained. Although I had knowledge of its existence, I didn't have a copy. I think we ought to separate these. A letter from Fox West Coast to Metropolitan Theatres Corporation dated May 29, 1947. Make it 48-A because I have another. [372]

The Clerk: 48-A-1.

(The exhibit referred to was marked as Plaintiff's Exhibit 48-A-1 for identification.)

Mr. Corinblit: And this is 48-A-2, a letter from Fox West Coast to the Metropolitan Theatres Corporation dated May 1, 1947.

(Testimony of John B. Bertero.)

The Clerk: 48-A-2 for identification.

(The document referred to was marked as Plaintiff's Exhibit 48-A-2 for identification.)

Q. (By Mr. Corinblit): I will show you Plaintiff's Exhibit 48-A-1, Mr. Bertero, and ask you if that is your signature at the bottom of the page.

A. Yes, it is.

Q. And the same thing with respect to Exhibit 48-A-2. A. Yes, it is.

Q. Would you examine 48-A-1, please.

A. I have examined it.

Q. Thank you. You might look at 48-A-2 at the same time.

Now, Mr. Bertero, does a reading of Plaintiff's Exhibit 48-A-1 refresh your recollection as to the period during which Fox had a 25 per cent interest in the net profits of the Los Angeles Theatre so long as that theatre operated, played Loew's pictures first run in Los Angeles?

A. No. It confirms my recollection. I said we [373] enlarged our interests. We had an interest in Metropolitan and then there were certain negotiations going on between us and Metropolitan in respect to the Los Angeles Theatre, and we enlarged our interest, and so today, unfortunately, we have 100 per cent of the Los Angeles Theatre. [374]

Q. Well, my question though is, Mr. Bertero, whether it isn't true in 1947 to November, 1949 you had an agreement with Metropolitan whereby you got 25 per cent of the net profits of the Los

(Testimony of John B. Bertero.)

Angeles Theatre so long as that theatre played Loew's pictures first run.

A. The agreement speaks for itself. It is in writing there, Mr. Corinblit. I can't dispute that.

Q. All right.

A. I said we enlarged our interests.

Q. Well, will you state that it is true then that you did have such an agreement in effect between '47 and November, '49?

A. I must concede I signed it and also that the agreement was in effect as to when it was terminated. I don't know, but we had extended negotiations in regard to the Los Angeles Theatre with our own subsidiary. That is why I signed on behalf of Fox West Coast and the president of the subsidiary company or vice president signed on behalf of our subsidiary.

How long the arrangements were in effect I don't recall.

Mr. Corinblit: The plaintiff will offer in evidence Exhibit 48-A-1 and 48-A-2.

The Court: It may be received.

(The documents heretofore marked Plaintiff's Exhibits Nos. 48-A-1 and 48-A-2 for identification were received in evidence.) [375]

* * * * *

Q. (By Mr. Corinblit): In this letter that I have just read, Mr. Bertero, you refer to a letter agreement dated June 15, 1944.

I will show you Plaintiff's Exhibit 31-H—first I will ask you whether or not—it is just a typewritten

(Testimony of John B. Bertero.)

signature, but I will ask you whether or not this is the letter agreement to which you refer in your letter of May 29, 1947.

A. Yes. I prepared this letter and signed it.

Q. You are referring to 31-H? A. Yes.

Q. All right. And that is the letter agreement referred to in your letter of May 29, 1947?

A. If it is the date, yes, I am sure it is. [377]

Q. All right.

Mr. Corinblit: I will offer Plaintiff's Exhibit 31-H.

The Court: It may be received in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 31-H.)

Q. (By Mr. Corinblit): Now, we will come back to these letters in a minute.

The agreement pursuant to which you operated the Los Angeles Theatre—I beg your pardon, operated the Egyptian Theatre and the Ritz Theatre, as a result of which Fox had 70 per cent of the stock and this other corporation referred to in one of the letters had 30 per cent interest, was the document known as the basic agreement, isn't that correct?

A. Actually, to be precise about it, United West Coast Theatre Corporation had a sublease of the Ritz Theatre for a period of time and that corporation operated the theatre.

Q. Yes, but the agreement whereby that took place was a document known as the basic agreement?

(Testimony of John B. Bertero.)

A. It arose out of what you call the basic agreement, which was the one that provided for the setting up of the new corporation and the leasing to it of the various theatres.

Q. And it was that agreement which was the subject of negotiations between you and United Artists Theatre Circuit in 1949, the termination of this agreement? [378]

A. Well, in a way you could say then, I think, basically. We both wanted to achieve a dissolution on a mutual basis of that corporation and there was involved the negotiations toward acquiring full ownership of the Chinese Theatre and one or two other theatres. I don't recall, but in a measure you might ascribe it as our intention to break up all the relationship that we had that year.

Q. The terminating agreement in 1949 refers to the basic agreement, doesn't it?

A. I think it does but I am not sure. Let me reflect on that for a moment. It is so long ago now. Yes, I think it referred to it. I think the agreement was in effect. That probably was 1954. If there had been an extension to 1954 we would have terminated the agreement as such.

Q. I will show you a document which has been heretofore marked as Plaintiff's Exhibit 31-F and ask you if you can identify this as the basic agreement to which we have referred.

(Handing document to the witness.)

A. This is the document that you refer to as the basic agreement, if this is the one of 1934.

(Testimony of John B. Bertero.)

Q. Yes, that is the one.

A. Yes.

Q. And its period of extension would have been 1954 unless you terminated before that?

A. Let me see. This expired in 1939, I [379] think, and it was extended for 10 years to 1949 or perhaps five years. That is where I am not certain, but in any event it was in effect either on a month-to-month basis or for a short period or short term in 1949.

Q. All right.

Mr. Corinblit: Plaintiff will offer in evidence Exhibit 31-F.

The Court: It may be received in evidence.

Mr. Johnston: May I see it before the court makes a ruling?

The Court: Yes.

(Document handed to Mr. Johnston.) [380]

The Clerk: Is this in evidence? What is the number?

Mr. Corinblit: 31-F.

The Clerk: Exhibit 31-F.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 31-F.)

Q. (By Mr. Corinblit): Now, Exhibit 31-F, which we described as the basic agreement, was tied to a so-called four-theatre agreement, was it not, Mr. Bertero, that is, a theatre agreement whereby four theatres were pooled together by you and United Artists Theatres Circuit, Inc., for operating

(Testimony of John B. Bertero.)

first run, and that theatre group later played Loew's product first run, isn't that right?

A. I think that they were not tied together except in one provision. My recollection of these 1934 arrangements, contracts, is that the so-called Venture agreement was entirely separate and apart from these arrangements, but that there was a provision to the effect that if the Four Star Theatre on Wilshire Boulevard, which was then operating subsequent run, should become a first run theatre Los Angeles, then it should be included with the Chinese, the Loew's State and the downtown United Artists. So there are three theatres plus the fact that the Four Star, if it operated first run, should be included.

That is the only reference, I think, in one [381] agreement to the other.

Q. Don't you remember in that four theatre venture there is a provision that if this agreement is terminated, the theatre venture agreement will be terminated? Do you remember that?

A. Say that again.

Q. That if the basic agreement, 31-F, was terminated, the four-theatre venture agreement would be terminated.

A. You asked about the tie-in from the basic agreement over to the venture. I didn't remember any provision in the basic agreement, and I still don't remember any——

Q. Have you finished? I am sorry.

(Testimony of John B. Bertero.)

A. As I say, I have no clear recollection of the provision of the venture agreement, there may be a provision in there, that the basic agreement would terminate. I haven't read them in years and years, so I wouldn't recall.

Q. I show you Plaintiff's Exhibit 31-G, which is, I believe, the venture agreement to which we have referred and which has been marked heretofore.

(Mr. Corinblit handing exhibit to counsel.)

I will show you, Mr. Bertero, Plaintiff's Exhibit 31-G for identification. I will first ask you to identify, if you will, the signatures on here of Mr. Joseph Schenck and Mr. Charles Skouras, wherever they appear. Those are their signatures? You don't have any doubt of that, do you? [382]

A. None whatever.

Q. I will call your attention to paragraph 15, beginning page 13, and running over to 14, and ask you to read that, if you will.

A. I referred to that other agreement, the basic, as being dated 1934. It says here it is dated 1933.

Q. You are right. A. So I was off a year.

Q. Yes. 1933 was the year.

A. I have read it, Mr. Corinblit.

Q. Does that refresh your recollection that they were linked together in the way that I stated, this is, if the basic agreement terminated, there was an option to terminate the four theatre venture?

A. I think you stated it differently before, but it does refresh my recollection, having read it.

(Testimony of John B. Bertero.)

Q. All right.

A. In other words, this states that if the basic agreement of September 1933 terminates, then either party to this agreement can terminate this agreement.

Mr. Corinblit: We will offer in evidence Plaintiff's Exhibit 31-G.

The Court: It may be received in evidence.

The Clerk: Exhibit 31-G. [383]

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 31-G.)

Q. (By Mr. Corinblit): Now, turning again, Mr. Bertero, to Loew's pictures first run in 1949, what was the arrangement, if you know, between Loew's and Fox whereby Loew's pictures automatically went into the group of three theatres, namely, the Los Angeles, the Wilshire and the Egyptian?

A. Well, I think there is a false assumption on your part there. At that time, taking them area by area, the Loew pictures were being offered in downtown Los Angeles in 1949 to any theatre operator that desired to negotiate and bid. Now, whether they offered or negotiated for those pictures, I don't know.

We had been playing the Loew pictures for years, I guess 20 years, in the Loew's State Theatre, and then we had been playing them in the Los Angeles Theatre later on, from about 1943. I think we were a very satisfactory account to Loew. In any event,

(Testimony of John B. Bertero.)

those were probably the two finest theatres in Downtown Los Angeles.

Now, in 1949, we exhibited the Loew pictures in the Los Angeles Theatre until we lost the lease of the Loew's State Theatre. We were literally kicked out on the street. Our lease had expired and Loew's evicted us. We would have like to have retained possession of the Loew Theatre, but our lease was terminated and they put us on the street in effect.

They took their own pictures and put them in their own theatre, Loew's State Theatre, in the latter part of 1949.

We took our own pictures, the Fox pictures, and put them in the Fox theatre, known as the Los Angeles Theatre.

Now, taking the other area, Wilshire Boulevard——

Q. This is 1949 now.

A. 1949. I have no recollection as to how pictures played on Wilshire Boulevard in 1949 except in respect of the two fine art policy houses, the Four Star and Fine Arts.

The Wilshire has played pictures of various distributors on various occasions first run in that area.

Going to Hollywood Boulevard, the Loew pictures had been playing in the Egyptian Theatre, oh, from at least, let's see, the Egyptian Theatre became a first run theatre in the war. It had previously been a first run theatre, and then during the depression of the early thirties it had to go subsequent run,

(Testimony of John B. Bertero.)

but the first run policy was restored in 1943, and Loew's licensed its pictures, the big pictures, of course, I mean, I don't mean the nondescripts, to the Egyptian Theatre from 1943 on down until, I think, Oklahoma was put into the Egyptian here a short while back.

I think that covers the Loew policy. I am uncertain about Wilshire Boulevard. My memory is poor on that one. But I know the Hollywood Boulevard situation and the downtown areas situation. [385]

Q. Now, let me see, Mr. Bertero. You said in 1949 Loew's offered their pictures to anybody who wanted to compete or bid, is that right, in 1949?

A. No, no. I said any exhibitor had the right to make an offer to license the Loew pictures, but I am sure that we would have been in that ring offering a competitive bid and a handsome film rental, and our house policy and our type of operation would have carried great weight in deciding who was the good bidder, the best bidder.

Q. But you didn't have to bid in 1949, did you?

A. I don't know. I don't think so. There is the possibility, because on one or two occasions—no. I think we licensed all the big Loew pictures at the Los Angeles Theatre until we lost possession of the Loew Theatre.

Q. And you know that in 1949 no other theatre had even a possibility of obtaining a Loew's picture in 1949 because they were committed to your theatre, isn't that true?

(Testimony of John B. Bertero.)

A. Let's put it this way. RKO was playing the outstanding RKO pictures, and perhaps certain Columbia pictures.

Q. Mr. Bertero—

A. Wait a minute. Let me finish my answer, Mr. Corinblit, because you put a semblance on this, and I want to state the fact.

The Paramount Theatre downtown at that time, I believe, was operated by Harry Arthur and [386] Marco, and they had, as I recall, a franchise for the Paramount pictures, so they weren't available to either the Los Angeles or Loew's, but in any event they customarily played and had played for years Paramount pictures.

The Warner Theatre played its own pictures in the Warner Downtown.

RKO played its own pictures at the RKO Theatre downtown.

Then there were certain companies, Columbia, Universal and United Artists, that didn't own theatres. Now, what more normal than that we play Fox pictures in our own theatre, the Loew theatre, while we had it, and later on the Los Angeles Theatre? We didn't need anybody's else's product while those pictures stood up.

Mr. Corinblit: Your Honor, I will move to strike the answer as not responsive.

The Court: Doesn't he have a right to explain his answer?

Mr. Corinblit: Yes, sir. I am perfectly willing

(Testimony of John B. Bertero.)

Mr. Bertero be given the fullest opportunity to explain if he would only answer the question I have asked first. He will certainly have all the opportunity to explain.

My question was whether or not it was not a fact, whether or not it was a fact that no other theatre had an opportunity of receiving Loew's first run pictures in 1949. [387]

Now, that either requires a yes or no answer, or I don't know, and then if he wants to explain, he can.

The Court: He has explained. Now you can answer yes or no, Mr. Bertero.

The Witness: Your Honor, I can't answer that question, because I don't know what Loew's was doing. I know we licensed the pictures. What they did, I don't know.

Q. (By Mr. Corinblit): You don't know what Loew's was doing?

A. Obviously I don't, Mr. Corinblit. They run their own business and we run our own.

Q. You don't know whether Loew's offered their pictures to any other theatre at all, do you?

A. The only time I know when a Loew's picture is offered somebody else is when a man is successful and it appears on his screen, and if I observe the daily paper and see that he is playing a Loew picture, I know he made a successful offer and is playing the picture. That's all I know.

Q. Now, Mr. Bertero, isn't this correct, that

(Testimony of John B. Bertero.)

with the rarest exceptions, at least from 1944 to 1949, Fox got virtually every single Loew's picture on first run Los Angeles?

A. I would have been terribly disappointed if we were unable to license Loew pictures customarily. Our performance was excellent. We needed the pictures. All we were concerned about is that we didn't pay too much for them, and we got a [388] lot of money at the box office. That is a fact.

Q. Mr. Bertero——

The Court: The answer is yes?

The Witness: The answer is yes.

Q. (By Mr. Corninblit): Now, isn't it a fact that from 1944 to 1949, with the rarest possible exception, you obtained those pictures without bidding for them?

A. Mr. Corninblit, I have in my office copies of all the competitive bids. It is a stack that high. I ask for them as routine, that they be sent to me. I cannot remember what pictures were bid for and what were negotiated for. It is impossible. [389]

The Court: Your answer is you don't know.

The Witness: I can't answer the question without reviewing a voluminous amount of documentary evidence.

Mr. Corninblit: Your Honor, at this time I would like to offer in evidence Plaintiff's Exhibit next in order, the play-off of Loew's pictures from January 1, 1945, to 1949.

(Testimony of John B. Bertero.)

Mr. Mitchell: Your Honor, we have sat here quietly while going into a period long ago.

We haven't heard of 1950 in this lawsuit yet. We haven't heard of 1950 when the Paradise Theatre started since the case opened on Tuesday.

And by your Honor's ruling we go back to 1949.

Now, as I told you yesterday, we are now rolling back and back to 1945.

I object to the offer of any play-off prior to 1949. It can't have a thing to do with this lawsuit. Indeed, 1949 has nothing to do with the lawsuit because at the end of 1949 the theatres changed hands.

There were new faces on the tee, and so what happened in 1949 has no more to do with the lawsuit than the flowers that bloom in May. Certainly 1949—1945 is far beyond your Honor's ruling. [390]

* * * * *

The Court: The objection is overruled. That is Exhibit what?

The Clerk: Exhibit 46-A-11.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 46-A-11.)

Mr. Corinblit: It is received in evidence?

The Clerk: Yes.

Q. (By Mr. Corinblit): Mr. Bertero, I will ask you to examine Plaintiff's Exhibit 46-A-11 and ask you to state for the record whether you can find in this exhibit, which shows the play-off of Loew's pictures on first run for 1945, '46, '47 and '48, a

(Testimony of John B. Bertero.)

single picture—a single Loew's picture that did not play in the Fox West Coast houses.

A. Well, it is entitled "Loew's First Run Play-off 1945." If it is complete—I know the outstanding pictures of Loew's played from 1945 until our eviction from Loew's State in the Los Angeles theatre and then they went back to [393] Loew's, to its own theatre, and we only played the Fox pictures in the Los Angeles theatre after that date, and then going to Hollywood Boulevard in about October of 1943, as I recall the date, the Egyptian customarily played the top Loew pictures until I think lately—in short, at the time that Loew's—you see, the Egyptian Theatre was playing Loew's pictures at the time we lost our interest in November of 1949 and Loew's pictures continued to play in the Egyptian, although we had no interest in it.

Now, taking the list and answering your question categorically——

Q. You don't really have to examine the list, do you?

A. I have got dates on here, Mr. Corinblit.

Mr. Johnston: You asked him to examine it.

The Witness: Yes, and I want to be accurate.

In 1945 these Loew's pictures here which shows the theatre in which they played, were played in theatres in which Fox West Coast had an interest, either full or partial.

Q. (By Mr. Corinblit): All of them—every single Loew's picture played in Fox Theatres and Fox

(Testimony of John B. Bertero.)

Theatres only from 1945 to 1949. That is my question.

A. If it played in the Chinese in 1945 it played in a Fox Theatre. Now, however you phrase it it still comes out the same.

Q. Mr. Bertero, you can answer that question, can't you? [394]

A. The exhibit speaks for itself. Let me take a picture then so the jury will understand. It really is a funny title—Lost in a Harem, January 26, 1945.

That played in the Chinese on Hollywood Boulevard. It played in Loew's State downtown and it played in our Uptown Theatre and we had all three theatres, so you had a simultaneous exhibition first run Los Angeles on that picture. And the same applies to each picture throughout the year.

Q. And the same applies to each picture throughout 1945, '46, '47 and '48?

A. For the years covered on the schedule and the pictures covered on the schedule.

Q. Every picture played in a Fox house only.

A. Every picture that is on this schedule, is shown by this schedule, is shown to have been exhibited by Fox West Coast Los Angeles.

Q. And that is all, no other theatres?

A. There are no other theatres on there. There isn't—that is true, they are all our theatres in each instance.

Q. All right. Now, I just want to point out a couple of these theatres, Mr. Bertero.

(Testimony of John B. Bertero.)

In 1945 there was a picture of Dorian Gray played at the Ritz Theatre on Wilshire Boulevard. That had about 1,300 or 1,400 seats, did it?

A. About 1,400 seats, as I recall. [395]

Q. All right. The picture Waterloo Bridge played at the Four Star. How many seats did that have?

A. Four Star had roughly 900 seats.

Q. And the picture This Man's Navy played at the Guild. How many seats did that have?

A. My recollection of the Guild, as I heard the evidence come in yesterday, has about 850 or 900 seats.

Q. Now referring, Mr. Bertero——

Mr. Westbrook: Are you finished with that?

Mr. Corinblit: Yes.

(Document handed to Mr. Westbrook.)

Q. (By Mr. Corinblit): Now referring to the Loew's matter, Loew's product in Fox houses. It was a fact, was it not, Mr. Bertero, to your knowledge—I will withdraw that question.

In 1949, I think you testified that negotiations, or early in 1948 negotiations began looking toward determination of the document we have labeled as the "Basic Agreement" or Exhibit 31-F.

A. I don't know whether I said "began," but there were negotiations over a period of time and I think they really got down to a definitive form in about 1948, the spring of 1948.

Q. Now, isn't this a fact with respect to those negotiations, that you and United Artists [396]

(Testimony of John B. Bertero.)

Theatres Circuit agreed that Loew's pictures would be played thereafter in the Loew's State Theatre and the Egyptian Theatre, which would be transferred to the United Artists Theatres Circuit, Inc.; that you and United Artists Theatre agreed that Loew's pictures would be played in United Artists Theatres Circuit, Inc. wherever they had theatres in existence with Fox, and that you also agreed that you would not thereafter compete for Loew's pictures first run in the City of Los Angeles. Isn't that true?

A. The answer is there is no such agreement and your implication is completely false and I will demonstrate why.

We had an interest in the Egyptian Theatre down to 1949, November, and the Loew's State—we put the Loew pictures in there. We licensed them and booked them into that theatre from 1948 to 1949.

We lost our interest in the theatre and those pictures continued to play in that theatre.

Now, we also acquired 100 per cent of the Chinese Theatre at about that time as a part of the same transaction and the Fox pictures had played in the Chinese Theatre. They played in 1949 and 1950 and 1951.

Where would you play the Fox pictures if you had them on Hollywood Boulevard? You would take the world-famous Chinese Theatre.

What would be your second selection? It [397] would be the Egyptian Theatre.

(Testimony of John B. Bertero.)

Metro had outstanding products. It was normal to play them in a satisfactory theatre and that theatre was a satisfactory theatre. And I suppose got satisfactory returns from it.

Now, if I may also add I Will Cry Tomorrow played at the Fine Arts or—and the Four Star Theatre on Wilshire Boulevard for, I think, 15 or 16 weeks.

At one time we had an interest in the Fine Arts or the Four Star. We lost it in 1949.

We played Loew's pictures in there before we lost it and they played—and our competitor played a very fine picture here that we would have liked to have had.

All that happened was there was a shift in ownership in the theatres and not in product.

Q. Now, did Mr. Pirosh—didn't Mr. Pirosh tell you that he and Mr. DeCicco, of United Artists Theatres, had a discussion in which they had agreed that Loew's pictures would be played in Loew's, in the United Artists Theatres Circuit everywhere they were in competition with Fox and agreed not to compete with Fox, agreed not to compete for them. Did he tell you that? You can answer that yes or no. A. When?

Q. In 1949, in the fall of 1949.

A. No. If he did I have no recollection of [398] it, because I would be aghast if such an agreement had been made, and I would have immediately seen

(Testimony of John B. Bertero.)

to it that no agreement of that character could be made.

Q. Now, Mr. Bertero——

A. It is obvious it can't be made.

Q. Now, Mr. Bertero, didn't Mr. Pirosh tell you——withdraw that.

Part of your negotiations with United Artists Theatres Circuit at that time had to do with not only the Egyptian Theatre on Hollywood Boulevard, but even with the United Artists Theatre in Inglewood, isn't that right?

A. That is correct, sir. Wherever there was a United Artists Theatre we dealt.

Q. Now, wasn't there an agreement at that time that United Artists Theatre in Inglewood was to get Loew's pictures and Fox would not compete for them?

A. None to my knowledge.

Q. Wasn't there an agreement——didn't United Artists Theatres Circuit even in their negotiations with you ask that Fox see to it that the United Artists Theatre be turned over to it as a first-run theatre?

A. Oh, yes. That ran through, not definitely in the negotiations concerning the taking back, the surrender of the shares for theatres, but that would come up sporadically, being coupled with another item that they did not want us, and [399] I have got to cast you back to that climate or ear. United Artists people were very fearful that we would run down their theatres when it became evident to all that they were going to come to a deal.

(Testimony of John B. Bertero.)

So, they wanted us to keep their houses in top shape. We were the management of United West Coast Theatre Corporation. They wanted their carpets kept in repair. They wanted to have the paint kept up, and so forth.

That was one thing that was always in their mind. And, secondly, they did not want us to put the inferior pictures in their theatres and that was expressed to me by—to me by their lawyer on several occasions. And I think a comment of that character would be made throughout the entire negotiations and dissatisfaction would be expressed on the way the booking of the California-Berkeley—no, not the California, but the United Artists-Berkeley—they thought we were favoring our own 100 per cent-owned California, and I assured him the reason we couldn't play the better pictures at that time in the United Artists was that the distributor was insisting it go into our California, or whatever the particular reason was, but except as that came up in the general negotiations there was never any discussion about it. [400]

Q. Now, isn't this a fact, Mr. Bertero, that United Artists Theatres proposed to you that you turn over the United Artists Theatre to them as a first run theatre?

A. I think they wanted every theatre with the best policy and as a first run theatre in the locality in which it was located. That would be a natural, selfish spirit of a business man.

(Testimony of John B. Bertero.)

Mr. Mitchell: You are not talking about first run Los Angeles?

Mr. Corinblit: No, no.

Mr. Mitchell: The United Artists in Glendale?

Mr. Corinblit: The United Artists in Inglewood.

Mr. Mitchell: I mean the United Artists in Glendale.

Mr. Corinblit: That is the one I am talking about.

Mr. Mitchell: You are not talking about first run Los Angeles.

Mr. Corinblit: No, no, no. First run Inglewood.

Q. (By Mr. Corinblit): Now, let's see if we can't get this straight, Mr. Bertero. It is true they proposed that you turn over the United Artists to them as a first run theatre in Inglewood, that is true?

A. No. I only can recall generally in the discussions, I think Judge Medina represented United Artists Theatres Circuit at that time. He is now on the bench. He and his associate would occasionally caution me that their client wanted [401] those theatres turned back in good physical condition, wanted us to keep them adequately repaired, and also they wanted them properly booked so that they would not be run down in the public's mind as a subordinate type theatre. But other than that kind of discussion and cautioning, there were no discussions about any runs.

Mr. Corinblit: I will ask the clerk to mark for identification as plaintiff's exhibit next in order a

(Testimony of John B. Bertero.)

document which is unsigned, but which is addressed to Charles P. Skouras, care Fox Theatres Corporation, dated September 26, 1949.

The Clerk: Exhibit 49 for identification.

(The exhibit referred to was marked Plaintiff's Exhibit No. 49 for identification.)

The Court: Well, while you are examining the exhibit, it is nearly 3:00 o'clock and we will take the afternoon recess.

Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties in this case until it is finally submitted to you. With that admonition, we will now recess until 15 minutes after 3:00.

(Recess.) [402]

The Court: Stipulate the jury is present in the box?

Mr. Johnston: So stipulated.

Mr. Corinblit: So stipulated.

The Court: You may proceed.

Q. (By Mr. Corinblit): Mr. Bertero, I will show you Plaintiff's Exhibit 49 for identification and ask you if you can tell me who was the author of this letter. It is unsigned.

A. Well, the letter is dated in September 1949. It is my recollection that it was written by Eugene

(Testimony of John B. Bertero.)

Sherpick, a law partner of Judge Medina, who represented United Artists Theatres Circuit.

Mr. Corinblit: We will offer in evidence, your Honor, selected portions of the letter dated September 6, 1949, subject to our right to offer the excerpted portions at a later time.

The Court: It may be received in evidence.

The Clerk: Exhibit 49.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 49.) [403]

* * * * *

Q. (By Mr. Corinblit): Now, Mr. Bertero, I ask you again whether it was a fact that in the fall of 1949, just about the time this letter was delivered to you, that there was a discussion between United Artists and Fox West Coast whereby there was an agreement between you and United Artists that Loew's pictures would go to the United Artists Theatres wherever they were in competition with your theatres, and that you would not compete against United Artists for those pictures?

A. The answer definitely is no. [405]

Q. Mr. Bertero, did you tell Mr. Pirosh that an agreement between Fox and any other exhibitor with respect to division of product would be improper?

A. I have told that to Mr. Pirosh and to other members of the organization many times, that any agreement between our company and any competitor in regard to the maintenance of admission prices

(Testimony of John B. Bertero.)

is illegal per se, and any agreement between us and any competitor in regard to any arrangement in respect to the distributors' product is illegal; in other words, we cannot agree not to compete.

I further advised Mr. Pirosh he was under no obligation to disturb an otherwise quiet situation; where an exhibitor, large or small, was playing certain pictures and we had a sufficiency of product, I advised Mr. Pirosh it was good business to continue *the* play the same product and to negotiate for it; that we ought not to incite a disturbance which might result even in lawsuits. [406]

Q. Or bidding?

A. Obviously if we are getting the pictures of a distributor at prices agreeable to us, we are the last ones to start bidding among exhibitors where it becomes dog eat dog.

We are content as long as we are left alone. We don't incite bidding. The distributors are the ones who start the bidding. We don't. It is our policy to negotiate for pictures and mind our own business and if we can license the picture on negotiations when it is offered to us, on terms suitable to the distributor, we do so.

If we have to bid, we bid, but we don't like bidding.

Q. Well, now, Mr. Bertero, it is a fact that Mr. —didn't Mr. Pirosh tell you that these agreements, that you told him were illegal per se, that Fox had in fact entered into those agreements in the Inglewood area? A. Of course not.

(Testimony of John B. Bertero.)

Q. He didn't tell you that?

A. He wouldn't enter into any such agreement.

He may not be able to express himself before you in a deposition, but Mr. Pirosh knows the law and would not violate the law knowingly.

I have known the man for some 20 years.

But I am the one who cautioned him that he was not obligated to start bidding, and that was my policy, the company [407] policy, that if we had a sufficiency product we should remain content.

We just got through playing Dee Dee at the Chinese Theatre and we lost thousands of dollars, but we are going to make it up on a picture now playing there.

Mr. Corinblit: Now, your Honor, I don't know with respect to this matter, how we want to handle a statement made by Mr. Mitchell in his opening statement on this subject.

I would like to call that statement made by Mr. Mitchell to Mr. Bertero's attention.

The Court: Well, an opening statement is not evidence in this case.

Mr. Mitchell: We will accept my opening statement as being the fact. We will accept it as the fact and then the lawsuit will be over.

Q. (By Mr. Corinblit): Now, Mr. Bertero, calling your attention to the first run play-off in the Los Angeles area in 1949, 1950 and to the fall of 1951. It is a fact with respect to Universal pictures, that Universal pictures played in one or two Fox

(Testimony of John B. Bertero.)

theatres on Hollywood Boulevard and United Artists Theatre downtown, isn't that right?

A. That has been the testimony here, Mr. Corinblit, yes.

Q. And on behalf of Fox when you bought those pictures,—well, I will withdraw that question. [408]

It has also been the testimony in this case by Mr. Zabel, Mr. Bertero,—I want to know whether you agree with this—whether you agree with that testimony, that Hollywood and downtown are in substantial competition with each other. Is that your testimony?

A. I have a firm conviction that Hollywood and downtown Los Angeles are in substantial competition with each other on first run pictures.

Q. Now, do you know approximately the distance between Hollywood and downtown?

A. I would guess 12 miles, somewhere from ten to 12 miles.

Q. Now, I take it that when you bought Universal pictures for the Fox theatres on first run, you did not attempt with Universal to get clearance over the United Artists Theatre downtown, did you?

A. No. I don't recall that we did. I think Universal just said they wanted a downtown run, but I didn't participate in the negotiations in any matter regarding the licensing of Universal pictures. It would be hearsay.

Q. You didn't tell your people at Fox that Fox, as far as United Artists Theatre downtown was

(Testimony of John B. Bertero.)

concerned, had to have an exclusive in the City of Los Angeles on Universal pictures? You didn't tell your people that Fox could do that with respect to Universal pictures, did you? [409]

A. Our film buyers try to buy exclusive on pictures that merited an exclusive run.

On pictures that you might call the "action type of picture," they might try to license the picture on an exclusive run, but the distributors have a lot to say about it. It is their picture. They are the ones who generally tell us whether it is going to be an exclusive run or day and date run with other theatres.

Q. Now, Mr. Bertero, all I asked was whether or not you told the buyers whether they should ask for it.

A. I don't tell them their day to day type of business judgment to exercise.

Q. Then your answer is no? A. It is.

Q. You didn't tell them? A. It is.

Q. Now, with respect to the Inglewood-Westchester area.

You remember that the Academy Theatre located, according to Mr. Mitchell, about four and four-tenths miles from the Paradise, four and four-tenths miles from the Paradise, bought pictures on a 7-day availability from time to time, isn't that right?

A. I am sure it has over the years. It has licensed many pictures on the 7-day availability.

Q. Now, wasn't it your opinion that the Acad-

(Testimony of John B. Bertero.)

emy Theatre was in substantial competition with the Paradise Theatre?

A. Yes, definitely.

Q. Did you tell your buyers that they should negotiate for clearance over the Paradise?

A. Yes. I advised Mr. Pirosh, and I remember this only because a bid letter came to my attention the other day in reviewing, in supplying some of the documents to our counsel, I advised Mr. Pirosh—in fact I may have helped prepare the letter, although I don't have any recollection at this time, but where he put in an alternative bid, and I believe it was on a Paramount picture, and we are now talking back about the time the Paradise was opened, I told him he could offer so much, so many dollars for it at the Academy Theatre if he got the picture, if he had clearance over the Paradise, and so many less dollars to Paramount if we were not granted clearance.

In my judgment the Paradise and the Academy have a relationship—have a reciprocal rights relationship. They are each entitled—they are in competition and each is entitled to negotiate for a picture clearance over each other if the distributor would sell it. Some distributors won't sell it. That is their business judgment. We can't force them to exercise our judgment.

Q. But you remember specifically telling Mr. Pirosh [411] to ask for clearance for the Academy Theatre over the Paradise Theatre?

A. No, I have no specific recollection except that

(Testimony of John B. Bertero.)

I have always been of the firm opinion that the Paradise and the Academy and the Loyola are in completion, one with the other, and that they should have correlative rights and I am sure I advised Mr. Pirosh many times on that matter. But I don't have any specific recollection of a conversation. It is too many years ago.

Q. But you didn't ask Mr. Pirosh to ask for clearance of the Fox theatres in Hollywood over the United Artists Theatre downtown on Universal pictures, did you?

A. I am sure I didn't because at that time it was the practice of the distributors on some pictures, on many pictures to sell a downtown run, a Hollywood run day and date as we say in the industry, and sometimes a Wilshire run.

It would be like me talking to the breeze to tell a distributor how to license his pictures on first run Los Angeles and whether he should license it on an exclusive basis or day and day basis.

They don't pay any attention to us. They adopt their own distribution policy.

Q. Isn't this a fact, Mr. Bertero, that you didn't tell your buyer to ask for clearance over the United Artists Theatre downtown because you had an arrangement with United [412] Artists Theatre downtown on an inter-related arrangement whereby you were to get Universal pictures on first run, but you told them to ask for clearance of the Academy over the Paradise because the Academy wasn't in any arrangement with Fox West Coast?

(Testimony of John B. Bertero.)

A. No. The answer again, Mr. Corinblit, is quite simple.

When Universal licensed a picture in Hollywood like the other distributors, it wanted to compete against these other distributors and it wanted a downtown run.

It would be unreasonable to me as a person who has been in this industry a long time to think that Universal would sell a Hollywood run and not a downtown run except on a picture of unusual caliber.

And I hate to mention the Chinese Theatre again, but it illustrates what goes on in this business today.

One of the greatest pictures of all time, in my judgment, is playing at the Chinese. Fox will not permit us to play that in any other theatre. They want the exclusive run in the Hollywood metropolitan Southern California area, that one exhibition, just as Cinerama is playing exclusively in the Warner Theatre.

That is one instance.

Now, if they have an action picture they don't care many times whether they have simultaneous runs in downtown [413] Los Angeles and Hollywood.

I think King And I will not play in Southern California on an opening for possibly five or six weeks. The people in San Bernardino will not see it because there will be people from there who come in to Los Angeles and who have their shopping to

(Testimony of John B. Bertero.)

do during the day and they might take in a matinee to see King And I.

It will open in Bakersfield later and San Bernardino later, but that is the distributors' policy as to how they exploit and develop the picture to give the greatest return to pay for the four and a half million-dollar picture. That is their policy.

Q. I am not talking about the distributors' policy. Your testimony is you told Mr. Pirosh, as far as Fox is concerned, to ask for clearance over—from the Paradise over the Academy but you didn't tell him to ask for clearance over the United Artists Theatre downtown because you had an arrangement with United Artists Theatre downtown whereby you were to get Universal pictures on first run. But you did tell them to ask for clearance of the Academy over the Paradise because the Academy wasn't in on any arrangement with Fox West Coast despite the fact they were in competition?

A. That wouldn't come to my mind, Mr. Corinblit, because of the fact an established theatre, in the nature of the business,—the matter would come to my attention when the [414] Paradise was built. Mr. Pirosh would have come to me for counsel and advice and he did and I am sure I helped him to prepare the bid letter where we offered more money if we had the exclusive run and offered less money if we had to play simultaneously with the Paradise. [415]

Q. Now, Mr. Bertero, it is true that the Academy Theatre, referring just to Loew's pictures,

(Testimony of John B. Bertero.)

when the Academy Theatre bought Loew's pictures, it bought them with clearance over the Paradise?

A. Will you repeat that? When the Academy bought the Loew pictures?

Q. On first run Inglewood, it bought them with clearance over the Paradise.

A. I don't know. I don't know what the distributor sold. It is too long back. The records will speak for themselves. The contracts are there. I don't know.

Q. Mr. Bertero, you notice the Loyola and Paradise Theatres are located a few blocks from each other? A. Yes.

Q. From the point of view of physical make-up and location, the Paradise Theatre is as suitable a theatre for first run as the Loyola is, is it not?

A. From the point of view of location?

Q. Yes.

Mr. Mitchell: Suitable to whom, your Honor?

Mr. Corinblit: Your Honor, here is the president of Fox West Coast.

The Court: Well, suitable for what?

Mr. Corinblit: Suitable for operation of a first run theatre. [416]

Mr. Mitchell: Suitable to whom? Some distributors like to license these small towns first run pictures and some don't. So those that don't, it won't be suitable for. Suitable to whom? An exhibitor? All exhibitors want a license first run.

The Court: In your opinion, was the Paradise Theatre as good as your theatre?

(Testimony of John B. Bertero.)

The Witness: I think that it has a very pleasing exterior. I have not been in the Paradise Theatre. I think so far as structure is concerned, that they are probably comparable. Perhaps the Paradise has a few more seats, but that doesn't mean much under present situations.

The Court: The location is good?

The Witness: I would give a slight edge to the Loyola on location, and I would also give the Loyola the edge on tradition. It was the first one there by some years. It is located close to Manchester. When the theatre was built, we were probably the principal business development there. I am the one who inspired the building of the Loyola, incidentally, your Honor. I think the location of the Loyola is slightly better than that of the Paradise.

The Westchester development was very small when I recommended we build a theatre there, and the homes were mainly down across on the north side of Manchester. We acquired the corner of Manchester and Sepulveda. [417]

Then the department store was built on the far side of the street over across Sepulveda. That was the next big development.

So the nucleus was around Manchester and Sepulveda.

Meanwhile, we had named the theatre the Loyola because Loyola University is out there, and put on several benefit type performances for the university, and we got sort of entrenched in the public mind out there and got a reputation.

(Testimony of John B. Bertero.)

But except for the fact that we have probably a little better location, and we had the tradition, and I think we were the ones who pioneered the community, I would say the buildings are comparable, certainly on the exterior, and I am sure Mr. Schreiber has good equipment, excellent equipment in his theatre. So that is the best way to answer that one.

Q. (By Mr. Corinblit): You couldn't just say yes or no, whether the theatre is suitable for first run?

The Court: He is an attorney. He can't say yes or no.

The Witness: I think there was a colloquy between his Honor and counsel, too, that intervened as to what the word suitability meant.

Q. (By Mr. Corinblit): The Loyola Theatre did operate on first run pictures from the day it opened until this very day, isn't that right?

A. Well, yes, Fox pictures, Mr. Corinblit. Remember [418] that Fox West Coast and Fox Film, Twentieth Century-Fox were one and the same in the sense that they owned all our stock, and they were the only company who would license what you might call the better pictures, in other words, that was a Fox house. Fox put its own pictures in there for its own reasons. We were glad to get them.

But no one else licensed us pictures, and to this date—well, I won't say to this date because there have been so many changes in the last few years,

(Testimony of John B. Bertero.)

but all I can recall is the Fox pictures going into the Loyola.

Q. The Loyola was built in 1946, is that right?

A. I think that is the year, yes.

Q. How was the development in Westchester in 1946? Pretty big or kind of small?

A. Very small. I will tell you the circumstances under which we picked the location.

Q. Could you just wait and let me ask a couple of questions. I am sure you will get all the chance you want to explain.

A. Well, what do we mean by small? I can narrate what I thought when I recommended to Mr. Skouras the construction of a theatre in that area. Can I describe the physical area?

Q. Before you do that——

A. All right.

Q. When you opened the theatre in 1946, you opened its [419] doors on a first run policy, is that right?

A. We put in a Fox picture first run, that is, Fox said they would let us have a picture first run to spring off the theatre, to give it a fine send-off, with lights, stars, and so forth.

Q. From that date, from 1946 on, it has been a first run theatre, right?

A. Fox has licensed its pictures through the years to that theatre except on large pictures. The King And I is not playing at the Loyola.

Q. But my question is not whether the King And I was playing, but just the simple question

(Testimony of John B. Bertero.)

whether from 1946 on it has been operating first run pictures.

A. With Fox pictures, I thing almost exclusively, ignoring the end of the second double bill. It was a Fox theatre showing Fox pictures first run out there in that area, but there may have been an exception when certain big pictures had an exclusive first run in Los Angeles and didn't play day and date.

The Court: When you say first run in that area, you mean first run simultaneously with other first runs in Los Angeles?

The Witness: Normally, your Honor, the Loyola Theatre from the date of its opening has shown the normal supply of Fox pictures day and date with the Chinese Theatre, [420] but occasionally during that period, I think there were certain large pictures, as I recall it, which played the Chinese Theatre, which did not play the Loyola Theatre simultaneously.

Q. When you had the idea of building the Loyola Theatre, actually the idea for the Loyola Theatre was to make it a first run theatre, is that correct? A. No.

Q. It was not the idea? A. No.

Q. Just a minute. Did Mr. Bowser ever tell you that was the idea?

A. I am the one who went to Mr. Skouras and generated the idea of building the Loyola Theatre, and if you want to hear the story, I will be pleased to tell it to you, but if you want it piece meal, I

(Testimony of John B. Bertero.)

will have to give it to you that way, Mr. Corinblit.

Q. Just let me get this out of the way first. Who was Mr. Bowser in 1946?

A. 1946, he was the general manager of Fox West Coast Theatres Corporation at that time, that is, he was general manager in charge of the operation of theatres.

Q. And you were a lawyer?

A. I was a lawyer, business executive, vice president of the company, concerned with financial and real estate matters and corporate matters. [421]

Q. You were all these things from 1946 to 1951?

A. As I testified this morning, from 1942 on.

Q. All right. Did Mr. Bowser tell you that he as general manager of the theatre wanted that theatre to be a first run theatre?

A. I don't recall that he did. He may have at some time——

Q. Have you read his deposition in this case?

A. No, I haven't.

Q. Have you spoken to him about that matter?

A. I haven't seen Mr. Bowser in at least a month. I saw him on the street just to say hello to him about a month ago, but other than that I haven't seen him in the last year.

Mr. Corinblit: With the assurance that your attorneys will ask you the questions to permit you to expand on matters we have discussed, Mr. Bertero, I don't have any further questions.

Mr. Johnston: May I have that. I didn't hear what the comment was.

(Testimony of John B. Bertero.)

The Court: He has turned the witness over to you.

Mr. Johnston: What did he say?

(Record read.)

Mr. Johnston: you mean we may cross examine Mr. Bertero now?

Mr. Corinblit: Sure. [422]

Mr. Johnston: I have no questions.

Mr. Mitchell: No questions.

The Court: You may step down.

Mr. Corinblit: Your Honor, I want to make a record again here with respect to Mr. Bertero. We are excusing him subject to a right——

Mr. Johnston: He will be produced on your request again.

The Court: All right.

The Witness: I have made it clear I will be out of town all next week, but I will be available any time after my return at the end of that week.

The Court: All right. This case will probably go beyond a week.

The Witness: I am sure it will, your Honor.

(Witness withdrawn.)

Mr. Corinblit: Plaintiff will call under 43(b) as an adverse and hostile witness, Mr. George Hickey.

GEORGE A. HICKEY

called as a witness by the plaintiff under Rule 43(b) of the Federal Rules of Civil Procedure, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, Mr. Hickey, your full name?

The Witness: George A. Hickey.

The Clerk: H-i-c-k-e-y?

The Witness: -e-y, yes.

The Court: Mr. Hickey, at the request of one of the attorneys at the beginning of this case I required the members of the jury to tell me how old they were. Some of them talked very low. They didn't talk up. I don't know how old you are, but can't you talk a little louder? These jurors have to hear what you say.

The Witness: All right. I will do that. I would like to have him talk a little louder to me, too.

The Court: All right, both of you talk up.

Direct Examination

Q. (By Mr. Corinblit): Mr. Hickey, by whom are you employed? A. I beg your pardon?

Q. By whom are you employed?

A. Loew's Incorporated. [424]

Q. How long have you been employed by that company?

A. Ever since they have been in business, 31 years.

Q. What is your position with that company?

A. Sales manager.

(Testimony of George A. Hickey.)

Q. Sales manager. What is your jurisdiction?
Over what area are you sales manager?

A. Pacific Coast.

Q. How long has that been true?

A. How long has what?

Q. How long have you been the Pacific Coast sales manager?

A. Oh, I would say about 20 years, approximately 20 years.

Mr. Mitchell: Could we have both Mr. Corinblit and Mr. Hickey raise their voices? It doesn't do any harm to talk a little bit louder. I don't believe Mr. Hickey can hear Mr. Corinblit, and I know that Mr. Hickey can talk louder.

The Court: All right. Mr. Corinblit, you lead the way and you speak a little louder.

The Witness: All right.

Q. (By Mr. Corinblit): Now, Mr. Hickey, calling your attention to the year 1949, did you know Mr. Pat Di Cicco? A. Yes.

Q. Who did you know him to be? [425]

A. I beg your pardon?

Q. Who did you know him to be in 1949?

A. Well, I believe he was representing United Artists at that time.

Q. That is United Artists Theatres Circuit, Inc., is that right? A. Yes.

Q. Did you know Mr. Bert Pirosh at that time?

A. Yes.

Q. Who did you know him to represent?

A. Well, at that time he was the buyer and

(Testimony of George A. Hickey.)

booker of—I believe he was the buyer at that time. I know he was the booker of West Coast at that time. Later on he was made the buyer.

Q. You were in charge of the sale of Loew's motion pictures. As part of your duties, you were in charge of the sale of Loew's motion pictures on first run in Los Angeles and in the Inglewood-Westchester area, is that right?

A. I am in charge of Loew's Incorporated and the pictures all over the Coast down to the Hawaiian Islands and the Island of Guam, up to Alaska.

Q. That includes Los Angeles first run and the Inglewood-Westchester area? A. That is true.

Q. In 1949, do you remember discussing with Mr. [426] Di Cicco Loew's pictures to be played in the United Artists Theatres Circuit? A. Yes.

Q. You did discuss that matter with Mr. Di Cicco? A. Yes.

Q. Did Mr. Di Cicco tell you he and Fox West Coast had had a discussion, Mr. Bert Pirosh had a discussion, in which they had agreed that United Artists Circuit theatres should play Loew's pictures wherever the two theatre groups were in competition and Fox would not compete for them? Did he tell you that?

A. No, he did not. It wouldn't make any difference, if I might say so, whether he did or didn't but he didn't. I am only interested in marketing our pictures to the best theatres at the terms that we feel is good for us, and it doesn't make any differ-

(Testimony of George A. Hickey.)

ence whether they have agreements among themselves or not. If I don't get the right terms, I don't sell.

Q. Mr. Di Cicco did not have a conversation with you in which he told you of that agreement with Mr. Pirosh, is that right? A. No, he did not.

Q. Is it your testimony that Mr. Pirosh never had such a conversation with you in which he told you of that agreement with Mr. Di Cicco?

A. I don't remember of ever talking to Mr. Pirosh about [427] that.

Q. In 1949, referring only now to the Inglewood-Westchester area, did Mr. Pirosh or Mr. Di Cicco tell you that he and the other one of the group had agreed not to bid on Loew's pictures—I will withdraw the question.

Did Mr. Di Cicco tell you he and Mr. Pirosh had agreed Fox would not bid on Loew's pictures?

A. No, he did not.

Q. Now, did you in your own mind come to the conclusion that there was such an agreement in existence in 1949?

A. Well, we generally do believe that there is something of that nature when only one bids, and the only one that bid at that time was the United Artists Theatre in Inglewood, but it was never told to me by anybody that they ever got together. [428]

Q. You just did conclude that in your own mind?

A. That is right. I could be right and I could be wrong.

(Testimony of George A. Hickey.)

Q. Now, after you concluded that in your own mind did you discuss the matter with Mr. Pirosh at all?

A. No. We asked for bids and if the bids were satisfactory we took them and if they are not satisfactory we turn them down.

Q. But you did not——

The Court: May I ask a question?

Mr. Corinblit: Certainly.

The Court: If you got only one bid would that satisfy you?

The Witness: If it was satisfactory we took it and if it wasn't satisfactory we turned the bid down and we renegotiated with everybody.

The Court: Well, it wouldn't be unsatisfactory because only one party bid, is that right?

The Witness: Well, it could be unsatisfactory, your Honor, because if it wasn't what we thought the picture was worth we certainly wouldn't sell it, even though we had to stay out of the town.

The Court: Well, if you got a bid from one company and you thought it was reasonable and it was what the picture was worth you would accept it.

The Witness: Yes, sir.

The Court: Even though you only got the one bid.

The Witness: If it was acceptable we would take it.

The Court: So, you didn't turn it down on the theory that you had only one bid?

The Witness: No, no. No, no.

(Testimony of George A. Hickey.)

Q. (By Mr. Corinblit): Now, did you ever ask Mr. Pirosh why he wasn't putting in bids against United Artists?

A. No. We had no reason to ask him. If the bid is satisfactory we take it.

Q. And you didn't ask him why he wasn't bidding? A. No.

Q. And, as a matter of fact, at that time you knew that the La Tijera Theatre in that area was not bidding? A. Yes, sir.

Mr. Mitchell: What time is that?

Mr. Corinblit: 1949.

Q. (By Mr. Corinblit): You knew that the La Tijera Theatre wasn't bidding, isn't that right?

A. That is right.

Q. And even though they weren't putting in bids you say you didn't discuss that with Mr. Kupper of the La Tijera Theatre, did you?

A. No. If we get a bid and the bid is what we generally—we generally send the bid out and we say we want 50 per [430] cent. Now, if we get the 50 per cent or if we get 40 per cent and we think the length of the run in that theatre will give us the revenue that we think we are entitled to, why, we will accept it and there is no reason for us to go any further.

Q. In other words, there is no reason for you to find out whether or not the Fox Theatre would give you more money or more playing time?

A. Well, I said a few minutes ago that we are not interested in whether the exhibitors get together

(Testimony of George A. Hickey.)

with themselves or not. That doesn't interest me, because if we get a satisfactory rental and a satisfactory bid we take it.

Q. And your answer to my question is—you remember my question was that you were **not** interested in finding out whether Fox was willing to give you a more satisfactory offer.

A. Well, if we feel that 40 per cent to 50 per cent is good terms we generally take it, because if the picture is good and it draws and hits, why, we will earn the 50 per cent.

If it is not that kind of a picture, then we are not entitled to any more money than the bid.

Q. Do you remember how large the United Artists Theatre was? A. How large it was?

Q. How many seats.

A. Well, I don't think the United Artists Theatre—this is only a guess, I really don't know——

The Court: Inglewood.

Mr. Corinblit: Yes.

The Witness: Talking about Inglewood. This is only a guess. I would say that the theatre seats about 800.

Q. (By Mr. Corinblit): And the Academy Theatre?

A. And the Academy Theatre would seat about 1,200—1,400.

Q. It is your testimony that you didn't care whether you received a bid from the Academy which would give you more money than you got from a smaller theatre, the United Artists Theatre, is that

(Testimony of George A. Hickey.)

right? A. Right.

Q. It doesn't matter to you?

A. It doesn't make any difference in our business. We can get a great many times more money out of the small theatre with 800 seats than we can out of a theatre with 2,000 seats, because a theatre with 2,000 seats will run the picture a week while the theatre with 800 seats will run it seven or eight weeks and sometimes longer.

It takes us a little longer to get the money out of a small theatre than it does out of a big theatre, but we eventually get as much money and, a great many times, more money.

Q. Now, Mr. Hickey, as a matter of fact, even though in your mind you had concluded that there was some kind of an arrangement between the exhibitors in the area—— [432] A. I have what?

Q. I say even though in your own mind in 1949, you concluded that there was an arrangement between the exhibitors, Loew's continued to send out bid letters, isn't that right? A. That is correct.

Q. In other words, you knew in 1949 that only one theatre was going to bid for your pictures and you sent out bid letters regularly, week after week, to all of the theatres, is that right?

A. I do not know that there were only one theatre going to bid. The reason we sent out bid letters was because somebody was asking for the pictures that didn't have them. In other words, West Coast was running our pictures, I believe, there at one

(Testimony of George A. Hickey.)

time and another exhibitor or two would ask us for the pictures, so we would say, "All right, you can bid for them," so we gave everybody a chance to get them by bidding for them.

Now, if they get together after that, that doesn't interest me. I am only guessing that they get together. I don't know that. Nobody ever told me that: "I agreed with him not to bid on your pictures."

If they get together that is none of my business as long as I get satisfactory terms and in the proper theatre for my pictures.

So, we keep sending out bid letters all the time.

Q. Now, Mr. Hickey, in February of 1950 you remember, do you not, that Mr. Schreiber made a—came to you and made a request to play Loew's pictures on first run or on seven days, isn't that right? A. I remember that.

Q. And with respect to the seven-day run you told him that he should bid for the pictures, is that right? A. That is right.

Q. Now, at that time you knew, didn't you, that there was in existence in the Inglewood area an arrangement whereby—designating what theatre was to get your pictures first run in the area?

A. I told you that I did not know that. I imagined or guessed that there might have been some arrangement. I didn't say I knew.

Q. Did you make any inquiries from any of the parties?

(Testimony of George A. Hickey.)

A. No, because I said a few minutes ago that it doesn't interest me whether they get together or whether they don't get together as long as my terms are satisfactory to me.

Q. Did you tell Mr. Schreiber, "Now, you are going into an area, Mr. Schreiber. I suspect, I guess that there is an arrangement in that area allocating Loew's pictures to the United Artists Theatre"?

Did you tell him that?

A. I didn't tell Mr. Schreiber anything [434] like that because I didn't know it.

Q. Did you tell him that you suspected it?

A. No, I didn't tell him I suspected it.

Q. Did you make any memoranda of this guess?

A. No.

Q. Did you discuss it with anyone else?

A. No.

Q. You didn't write a letter to the home office about it? A. No.

Q. Or discuss it with Mr. Aspel? A. No.

Q. Now, Mr. Hickey, at the end of 1949 and the beginning of 1950, referring to first run Los Angeles, in 1950 your pictures played first run Los Angeles in United Artists Theatres Circuit theatres, isn't that right?

A. Well, in what theatre are you referring to?

Q. I am talking about the Loew's State and the Egyptian Theatres, which at that time, in 1950, belonged to United Artists Theatres Circuit.

A. That is correct.

(Testimony of George A. Hickey.)

Q. So in 1950, the early part of 1950 first run was being played, Loew's product, in the United Artists Theatres Circuit theatre downtown and first run on your pictures was being played in the United Artists Theatre in Inglewood. Is that right?

A. In Inglewood?

Q. They were playing first run in the United Artists Theatre in Inglewood.

Mr. Westbrook: Seven-day availability.

Mr. Corninblit: Yes, on the seven-day availability.

The Witness: Yes.

Q. (By Mr. Corninblit): And in Los Angeles on the first run they also were playing in the United Artists Theatres Circuit theatre, namely, the Loew's State and Egyptian? A. That is right.

Q. But it didn't play in Inglewood for seven days after. A. No.

Q. Didn't Mr. DiCicco tell you that part of the agreement, the arrangement with Mr. Pirosh was that Loew's pictures first run would go to United Artists Theatres in Los Angeles and Loew's pictures on seven days would go to the United Artists Theatre in Inglewood? A. No, he did not.

Q. And did Mr. Pirosh tell you that?

A. No, he did not.

Q. Did you suspect there was an arrangement with respect to this matter? A. No.

Q. You did not even have a suspicion on that matter? A. No. [436]

(Testimony of George A. Hickey.)

Q. Now, you know, however, in early 1950 that Fox did not, after the first part of 1950, try to get Loew's pictures on first run in Los Angeles, don't you? A. I didn't understand that.

Q. All right. In 1950, the early part of 1950 when Loew's pictures went into the Loew's State downtown, Fox West Coast did not try to get those pictures from Loew's first run?

A. Well, I probably didn't want to play anywhere but the State Theatre downtown, Loew's State Theatre. I wanted that theatre.

I never wanted to play in the Los Angeles Theatre for two reasons. First, the Loew's State Theatre is situated on the corner of Broadway and 7th Street, which is the best corner in the City of Los Angeles downtown.

The Los Angeles Theatre is a block away and it is situated in the middle of that block and is not a good location. It is not as good a theatre and it has 400 seats less, and that is the reason that I wanted to play my pictures in the State Theatre, because I could earn more money for my company. That is the only reason.

Q. Now, Mr. Hickey, I have just a simple question on this point, not with respect to what Loew's wanted, but what Fox did. Did Fox in the beginning——

Mr. Mitchell: Fox West Coast.

Q. (By Mr. Corinblit): Fox West Coast in the beginning, [437] in 1950, try to get Loew's pictures from you first run in Los Angeles?

(Testimony of George A. Hickey.)

Q. Where?

Q. Downtown Los Angeles.

A. Did Fox try to get them?

Q. Yes.

A. Well, I am not sure about the dates now, but around that time, if I am not mistaken—was that the time that the lease on the theatre changed hands? I am not sure about that. But there was a period there where the State Theatre was taken back from Fox after their lease run out and the Loew's Incorporated was going to run the theatre themselves. I am not sure about the date. [438]

Q. Perhaps I haven't made my question clear. In early 1950, did any buyer from Fox West Coast ever come to you and say, "Mr. Hickey, I want to buy your Loew's pictures first run Los Angeles"? Did Pirosh ever say that to you in 1950?

A. Everybody said that to me. They all want to buy Metro-Goldwyn-Mayer pictures because they are the best pictures, so everybody tells me [439] that.

* * * * *

Q. Mr. Hickey, I think yesterday we ended the session with your statement as to the fact you thought that Loew's product was a very good product, Loew's pictures were very good pictures. And I take it, like any distributor, your opinion was that you had some pictures that were better than [443] others—I mean as a general matter that is true, isn't that right, but Loew's always, in your opinion, certainly had quite superior pictures for

(Testimony of George A. Hickey.)

the market? A. I can't hear you.

Q. Loew's, in your opinion, certainly had a very good picture to market—had very good pictures to market generally, isn't that correct?

A. They have the best.

The Court: That is what he said yesterday.

Mr. Corinblit: I wanted him to say it again so we could get it clear.

Q. Now, the evidence in this case, Mr. Hickey, shows, one of the exhibits that has been introduced in the case, shows that in 1949, up to about November of 1949, all of the Loew's pictures went to Fox West Coast. As a matter of fact, the evidence in this case introduced so far shows that from 1945 through the latter part of 1949 all of Loew's pictures went to Fox West Coast.

I want you to take a look at those schedules in a minute, but it is a fact, is it not, Mr. Hickey, first turning your attention to the period in 1949 and 1950, you didn't talk to anybody that had the Warner theatres in Los Angeles about selling your pictures to them in 1949 or 1950, did you?

A. Yes; we talked to everybody but there was no room for our pictures in the Warner theatre because the Warner [444] theatres play their own pictures.

Q. Now, I take it you remember, do you, that somebody from Warners talked to you in 1949 or '50? A. We talked to everybody.

The Court: That is not the question. Do you remember yourself personally?

(Testimony of George A. Hickey.)

The Witness: Yes, I have talked to Mr. Wallenstein many, many times about our pictures downtown.

Q. (By Mr. Corinblit): Do you remember I took your deposition in this case?

A. What is that?

The Court: Keep your voice up.

Mr. Corinblit: Yes. I think there is a problem with my throat.

May I have the original of Mr. Hickey's deposition.

(Document handed to Mr. Corinblit.)

Q. I will show you the original of the deposition which has been filed in this case, Mr. Hickey, and ask you if this is your signature on page 45?

A. That is right.

Q. And this indicates it was subscribed and sworn to on the 11th day of July, 1956—that is just yesterday or the day before, is that right?

A. That is right.

Q. Now, I call your attention to page 15 of that [445] deposition and the following question.

Mr. Mitchell: Just a minute before you read it. Let him read it, please. It may not be proper—it may not be impeachment at all.

The Court: Yes, let the witness read it.

Mr. Mitchell: What line?

Mr. Corinblit: The question at line 2 and the answer at line 5. [446]

The Witness: That is what I said now. They run their own pictures.

(Testimony of George A. Hickey.)

Q. (By Mr. Corinblit): Does this refresh your recollection, Mr. Hickey, that Warner's theatres did not talk to you about licensing your pictures first run after 1949?

A. Well, it is just what I say here. I am quite sure they didn't, because they run their own pictures.

Q. Yes. All right. Without regard to the reason, the fact is that after 1949 Warners did not talk to you about licensing Loew's pictures?

A. Well, I don't talk to every buyer or booker. We have salesmen and managers to do that. I am the head of this division, and they do that.

The Court: Mr. Hickey, the question isn't what they do. The question is what you did. Did you talk to them personally?

The Witness: I might have and I might not. That I can't remember, whether I talked to them personally or not.

Q. (By Mr. Corinblit): You say you might have and you might not? A. Yes.

Q. But in your deposition, Mr. Hickey, just taken on June 20th, which you signed yesterday or the day before, you state, "I am quite sure they didn't." You were quite sure yesterday that they didn't talk to you, and now you are uncertain. [447]

A. You might say you are quite sure, but that doesn't mean that you did or you didn't.

Q. Now, after 1949 or 1950, did you talk to anybody at the RKO Hillstreet or Pantages Theatre about selling your pictures first run to them?

(Testimony of George A. Hickey.)

A. Well, that is generally handled in New York, because the New York office of RKO——

The Court: Mr. Hickey, that is not the question.

Mr. Corinblit: I move to strike the answer.

The Court: The question is, did you yourself personally talk to them?

The Witness: No.

Q. (By Mr. Corinblit): The fact is that after 1949 or 1950, you did not talk to anybody at the Paramount Theatres to play your pictures first run, did you, you personally?

A. Well, I don't remember that.

Q. I want to show you, Mr. Hickey, Plaintiff's Exhibit 46-A-11 in evidence, which is the Loew's play-off from 1945 to 1949. Let's start with 1945.

You will notice in this list—this list incidentally is stipulated to by your counsel to be a complete list of the play-off of Loew's pictures during this period.

Mr. Westbrook: Subject to correction.

Mr. Corinblit: Subject to correction, yes.

Q. Run your eye down the name of theatres along the [448] side for the year 1945. The first two pages are 1945.

A. Well, I believe this is——

Q. I haven't asked a question yet, Mr. Hickey. Now, my question to you is this. It is true, is it not, every single theatre on that list is a Fox theatre?

Mr. Mitchell: You mean was a Fox theatre at that time.

(Testimony of George A. Hickey.)

Mr. Corinblit: Yes.

The Witness: In 1945?

Q. (By Mr. Corinblit): Yes. Just that question.

A. Yes.

Q. Now, I want you to run your eye down, if you could, the next two pages, which are 1946. My question to you is this. Is it not a fact that every theatre on that list was a Fox theatre?

A. Yes.

Q. I will ask you to do the same thing for—well, these are the last of 1946. I think you will find they are the same, is that right?

A. That's right.

Q. I will ask you to examine the year 1947 and state whether or not every theatre on that list was at that time a Fox theatre? A. Yes.

Q. I will ask you the same thing for 1948. State [449] whether every theatre on that list was not a Fox theatre? A. That is correct.

Q. Now, Mr. Hickey, just as in 1949, after 1949, prior to 1949, at least beginning from 1945, you never talked to anyone, you never talked to anyone representing Warners to try to get your pictures into their theatres, did you?

A. Well, I talked to so many people, I can't remember who I talked to.

Q. You have no recollection of ever talking to a Warner's person, do you?

A. We talk to everybody. We don't miss anybody.

Q. I think you testified you had top pictures at

(Testimony of George A. Hickey.)

Loew's, is that right? A. That's right.

Q. Is it your testimony that with these top pictures from 1945 to 1949, you couldn't sell a single picture to RKO, to Warners, or to Paramount, or to any independent theatre in this city? Can you answer that yes or no?

A. No, I don't say that. But I will have to explain it. RKO run their own pictures, so their theatres are tied up.

Warners run their own pictures, so their theatre is tied up.

The Paramount, I believe at that time they had a franchise with the Paramount producing company, and they run [450] nothing but Paramount, so that was tied up.

There was no place for us to go but to the other two best theatres downtown, and those theatres are Loew's State and the Los Angeles Theatre. [451]

Q. Now, Mr. Hickey, you have made a statement and I would like if you would just answer my question.

It is a fact from 1945 to 1949 that you did not solicit any one of these companies that I have enumerated to play your pictures on first run?

Mr. Mitchell: Wait a minute. I object to that on the ground it has just been asked and answered. He said no, and he explained why he didn't, because there wasn't any theatre available except the Los Angeles and Loew's State. It has just been asked and answered.

The Court: Overruled. Answer the question.

(Testimony of George A. Hickey.)

The Witness: Well, I can't remember that because I don't do all of the selling. As far as that is concerned I do very little selling.

We have men to sell our pictures and I can't remember. I can't answer that question.

Q. (By Mr. Corinblit): As far as you are concerned, however, you did not solicit any of these people?

A. I don't remember it. I might have.

Q. But the record shows you were never able to sell a single picture, good or bad, to any other theatre in the city of Los Angeles, is that right?

A. No.

Mr. Mitchell: The record speaks for itself, your Honor. That is just argumentative. [452]

The Court: Well, you are talking about first run pictures?

Mr. Corinblit: Yes, your Honor.

The Witness: No, I wouldn't say that. I wouldn't say that we didn't try to sell because we tried to sell everybody. But when a theatre is tied up, how are you going to sell them?

Q. (By Mr. Corinblit): Mr. Hickey, if we could just get the one question whether you tried to sell it to these theatres from 1945 to 1949.

A. Well, I can't answer that question without telling you again that these theatres were tied up with other pictures and it was impossible to sell them.

Now, if you are asking me if I personally tried to sell them, I don't remember that.

(Testimony of George A. Hickey.)

Q. Now, it is a fact, Mr. Hickey, is it not, not only didn't you try to sell your pictures to any other theatre but the fact is that no representative of RKO, no representative of Pantages, no representative of Warners or of Paramount ever solicited you to play Loew's product during this period, isn't that correct?

A. No, I wouldn't say that it was correct because I don't remember whether they did or did not.

Q. Mr. Hickey, not only is this record that I have shown you, Plaintiff's Exhibit 46-A-11 through 1945 on, but wouldn't you say that the same facts would be shown if [453] you were to see the play-off of Loew's pictures beginning at least as early as 1940?

Mr. Mitchell: Wait a minute. I object to that on the ground it assumes a fact not in evidence. He says from 1945 on and it isn't true from 1945 on.

The Court: Objection sustained.

Mr. Mitchell: If he will show him the 1949, '50 and '51 play-off he will find that is not true, so it is assuming a fact not in evidence.

The Court: It is going back beyond the period of damage here, which was 1950. I don't want you to go back as far as 1940. There is such a thing as running a good thing into the ground, you know.

Mr. Corinblit: Yes.

Q. Now, Mr. Hickey, you remember, don't you, that actually during the period '45-'49, not only was it true that Loew's played their pictures only in Fox theatres, but the fact was also true that—the

(Testimony of George A. Hickey.)

fact was also true that at least beginning in 1945, substantially all of Columbia product went to the the Pantages Theatre, isn't that right?

A. I don't know anything about that.

Mr. Mitchell: You are talking about first run pictures?

Mr. Corinblit: First run, yes.

The Witness: I don't know anything about Columbia.

Q. (By Mr. Corinblit): And it is also true during that [454] period substantially all of RKO pictures went to the Pantages Hill Street Theatre?

Mr. Mitchell: You are talking about first run?

Mr. Corinblit: Yes.

Mr. Johnston: And you have been talking about first run all the way through, isn't that right?

Mr. Corinblit: Yes.

Q. Isn't that true?

A. I am only interested in Metro Goldwyn Mayer pictures. I don't know anything about any other company.

Q. I just thought a minute ago you stated that you knew that the RKO Theatre played the RKO pictures? A. Yes, they did.

Q. Now, it is also true during this period that the Warners' pictures played only in the Warners' theatres, isn't that right?

A. As I said before, I don't know anything about any other company, only I know this, that Warners and Fox and RKO played their own pictures and had no room for our pictures.

(Testimony of George A. Hickey.)

Q. Now, it is also true, is it not, Mr. Hickey—I will withdraw that.

Mr. Corinblit: Your Honor, at this time I would like to offer into evidence the remainder of the play-off from 1945 to 1949—let me before I make that offer ask another question. [455]

Q. Mr. Hickey, in fact you know that from 1945 to 1949 there was in effect in the Los Angeles area an allocation of first run pictures whereby Fox was allocated the Loew's pictures; after 1946 Fox was allocated the Universal pictures; Fox was allocated the Twentieth Century-Fox pictures and no one ever tried to take those pictures away from Fox, and that there was an arrangement in Los Angeles whereby Columbia pictures was allocated to the RKO Theatre and RKO pictures were allocated to that group of theatres and no one ever tried to take away those pictures from the RKO Theatre——

Mr. Mitchell: That is argumentative, but I am not going to object to it, so he may answer the question.

The Court: Just a minute. Let him finish. He hasn't finished his argument yet.

Q. (By Mr. Corinblit): And you also know during that period there was an arrangement whereby Warners pictures went to the Warner theatre and the Warner theatres would never try to compete for either the pictures of any other company and the same thing was true with respect to Paramount pictures.

(Testimony of George A. Hickey.)

Now, you know there was such an arrangement in Los Angeles from 1945 to 1949, do you not?

Mr. Mitchell: Your Honor, it is a very argumentative question but I want him to answer it so I won't object.

The Witness: Well, I don't exactly understand what he [456] means when you say that I know. I don't know anything about anybody's pictures but our own. [457]

Mr. Corinblit: Your Honor, I would like to offer in evidence at this time the remainder of the schedule from 1945 to 1949.

Mr. Mitchell: What is the remainder of the schedule? What are you talking about? What piece of paper? Let's see it.

The Court: Let's have your exhibit numbers now.

Mr. Corinblit: Yes, sir. The portion of Exhibit 46-A-1 referring to the six companies other than Loew's and Paramount covering the period from 1945 to 1949 only. I will be glad to offer those in evidence distributor by distributor.

The Court: You have got part of this exhibit in, haven't you?

Mr. Corinblit: Yes.

Mr. Mitchell: This goes back to 1940 now.

Mr. Corinblit: Yes. I am only offering—they are separated by years. I am only offering the portion of the exhibits from 1945 through 1949, to complete this picture.

(Testimony of George A. Hickey.)

Mr. Johnston: You should detach the earlier part.

Mr. Corinblit: Yes. It is a very simple matter, your Honor. We will detach the earlier section.

The Court: Well, if you will eliminate the ones before 1945, they may be admitted in evidence.

Mr. Corinblit: All right, your Honor. As the next exhibit in order, we will offer in evidence 46-A-12, a play-off [458] of Columbia pictures from 1945 to 1949.

The Court: It may be received in evidence.

The Clerk: 46-A-12.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 46-A-12.)

Mr. Corinblit: We will offer as Plaintiff's Exhibit 46-A-13 the play-off of RKO pictures on first run in Los Angeles from 1945 to 1949.

The Court: It may be admitted.

The Clerk: Exhibit 46-A-13.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 46-A-13.)

Mr. Corinblit: We will offer as Plaintiff's Exhibit 46-A-14 the play-off of Twentieth Century-Fox pictures on first run Los Angeles from 1945 to 1949.

The Court: It may be admitted.

The Clerk: 46-A-14.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 46-A-14.)

(Testimony of George A. Hickey.)

Mr. Corinblit: We will offer as Plaintiff's Exhibit 46-A-15 the play-off of United Artists pictures on first run from 1945 to 1949.

The Court: It may be admitted.

The Clerk: Exhibit 46-A-15. [459]

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 46-A-15.)

Mr. Corinblit: We will offer as Plaintiff's Exhibit 46-A-16 the play-off of Universal pictures first run in Los Angeles from 1945 to 1949.

The Court: It may be admitted.

The Clerk: Exhibit 46-A-16.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 46-A-16.)

Mr. Corinblit: We will offer as Plaintiff's Exhibit 46-A-17 the play-off of Warner pictures first run in Los Angeles from 1945 to 1949.

The Court: It may be admitted.

The Clerk: 46-A-17.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 46-A-17.)

Q. (By Mr. Corinblit): Now, Mr. Hickey, with respect to first run in Los Angeles——

The Court: Mr. Corinblit, keep up your voice. Mr. Hickey told you he can't hear very well.

Mr. Corinblit: I'm sorry.

Q. There was a time, was there not, Mr. Hickey, just prior to 1949 and during 1949 that Loew's was playing its pictures first run in three theatres, isn't

(Testimony of George A. Hickey.)

that correct? A. That is correct. [460]

Q. Those theatres were the Los Angeles, the Egyptian and the Wilshire Theatre on Wilshire Boulevard. A. That is correct.

Q. Subsequently, in 1950, Loew's shifted their product from three theatres to two theatres, which included the Loew's State Theatre downtown and the Egyptian Theatre on Hollywood Boulevard only, isn't that correct?

A. That is correct.

Q. Now, you discussed the shifting of Loew's pictures from three theatres to two theatres with Mr. Zabel of Fox West Coast, did you not?

A. That is correct, because the theatres belonged to the West Coast people and he worked for them.

Q. And they agreed with you that you should shift the product from three theatres, that is the Los Angeles, the Egyptian and the Wilshire, to the Loew's State and the Egyptian, isn't that correct?

Mr. Mitchell: Let's get a foundation laid for this conversation instead of the conclusion of an agreement. If there was a conversation with Mr. Zabel, it must have been on a date and in a place with somebody present, and not by a conclusion. I object to the question on the ground it calls for a conclusion. No foundation laid.

The Court: Lay the foundation.

Q. (By Mr. Corinblit): Mr. Hickey, about when did you [461] talk to Mr. Zabel, approximately what time?

A. I don't remember that, but I remember I

(Testimony of George A. Hickey.)

talked to him, and I remember I wanted to shift it. The reason I wanted to shift it was because during the war period there was a lot of soldiers and a lot of people on the streets and they were looking for entertainment. They would go into any theatre, and all theatres at that time were crowded. It was all right then to play three theatres, but when the war was over and they were taking the soldiers out of this town, there wasn't so much business and I was fighting three overheads, and large overheads, because the State and the Egyptian and the Fox Wilshire——

Q. The Los Angeles and Egyptian.

A. Well, the Los Angeles and the Egyptian and the Fox Wilshire, they were three large theatres and they all had large overheads, and I didn't want to fight large overheads in three theatres on poor business, so I thought it was good business for me to refuse to play theatres from that period on.

So I went to see Mr. Zabel and I talked to him about it, and I told him that he was not making and money and I was not making any money by fighting three overheads, and I would like to confine my pictures to two theatres and I would like to set them up as a showcase, one downtown and one in Hollywood, and then we could do proper advertising in those two [462] theatres and sell our pictures to the rest of the territory in those theatres.

Q. The two theatres you named were what?

A. Well, at that time—I don't remember dates

(Testimony of George A. Hickey.)

and I don't try to. I have so much to remember that I don't try to remember dates. It might have been the Los Angeles and the Egyptian, or it might have been the State and the Egyptian. I don't remember that.

Q. The only two theatres you played simultaneously with each other after the three theatres were the Loew's State and the Egyptian, isn't that right? A. That may be true. [463]

Q. Mr. Hickey, I will show you the play-off of Loew's pictures, Exhibit 46-A-4, and show you that prior to the picture Border Incident, November '49, the three-theatre group you referred to was Los Angeles, Egyptian and Wilshire, and after that date the two-theatre group is the Egyptian and the Loew's State, is that right?

A. Well, that could be right because I told you I didn't remember which theatre it was.

Q. Yes. So therefore the theatres that you talked about were the Loew's State and the Egyptian?

A. Yes.

Q. And Mr. Zabel agreed with you that it was all right to transfer the pictures from the three-theatre group, the Los Angeles, Wilshire and Egyptian, to the two-theatre group, the Loew's State and Egyptian?

Mr. Mitchell: Now, wait a minute. I object to that as argumentative. He is stating a conclusion.

If he wants what Mr. Zabel told him he should ask what Mr. Zabel told him and not give a conclusion.

(Testimony of George A. Hickey.)

There was not a transfer. There was a selling of pictures, first in three theatres and then they decided to sell to two theatres.

The Court: Objection sustained.

Mr. Corinblit: All right.

Q. (By Mr. Corinblit): What did Mr. Zabel say? [464]

A. Well, it wouldn't have made any difference to me.

Q. May I interrupt you, Mr. Hickey? I wonder if before you get into that you could just tell me, if you remember, what Mr. Zabel said.

A. Why, no, I don't remember what Mr. Zabel said.

The Court: Your attorney objected a moment ago and he wants you to give the testimony instead of any conclusion.

Do you remember what he said?

The Witness: I started to tell him but he stopped me.

I started to say that it wouldn't have made any difference whether Mr. Zabel agreed to it or not or whether he didn't agree to it.

I would have taken the pictures out of the Wilshire Theatre because they weren't profitable for us to run them there.

Mr. Corinblit: Your Honor, I move to strike the answer as non-responsive.

The Court: It may go out.

Q. (By Mr. Corinblit): Now, Mr. Hickey, just state what Mr. Zabel said as to whether he said,

(Testimony of George A. Hickey.)

“I agree,” to that or not. Did he say that in substance or effect?

A. Well, I think he must have agreed to it.

Q. Now, Mr. Hickey, when in—I will withdraw that.

This discussion you had with Mr. Zabel was just prior to the transfer from the three theatres to the two-theatre group? [465]

Mr. Mitchell: I object to that on the ground it assumes a fact not in evidence, that there was ever any transfer. You don't transfer pictures. This is not a streetcar line. You sell pictures. First you sell three theatres and then you sell two. There isn't any transfer involved. And it assumes a fact not in evidence and is argumentative.

The Court: What do you call it, Mr. Hickey, when you change theatres? Was there a transfer?

The Witness: No, there was no transfer.

The Court: What do you call it?

The Witness: I call it a sale in an individual theatre. Now, we sold the pictures to the——

The Court: Well, you changed theatres. What did you call it when you changed theatres? What do you call it when you move a product from one theatre to another? Is that a transfer?

The Witness: No. We cancelled it in the Wilshire Theatre and we continued it in the other two theatres.

The Court: Well, I thought you changed from the Los Angeles to the RKO.

Mr. Corinblit: Loew's State.

(Testimony of George A. Hickey.)

The Court: Yes, Loew's State.

The Witness: No. As I remember it, we were running in the Loew's State at the time and we also run in the Wilshire and we run in the Egyptian at the same time, three theatres. [466]

The Court: You don't question the play-off, the play-off that has been introduced here?

The Witness: No, I don't question the play-off.

The Court: I think the play-off shows that you transferred from the Los Angeles Theatre——

The Witness: Oh, oh, well, I didn't understand what he was—I thought he was talking about a transfer from the Wilshire to Hollywood.

The Court: When you left the Los Angeles Theatre and went into another theatre what term do you use for that?

The Witness: Well, as I understand that, they lost their lease in the theatre and from that time on Loew's, as I remember it, took the theatre back because they owned the building and they owned the theatre.

The Court: Mr. Hickey, this is a very simple question.

You changed from one theatre to another. You changed from showing your pictures in one theatre to another. Now, what is the term for that change? Is there a transfer from one theatre to another theatre?

The Witness: No. We simply cancel the pictures in one theatre and we sell them to the other theatre. We don't call it a "transfer."

(Testimony of George A. Hickey.)

The Court: Do you have any term for that transaction?

The Witness: No, that is all we do.

The Court: You wouldn't call it a "transfer"?

The Witness: No.

The Court: All right.

Q. (By Mr. Corinblit): Now, Mr. Hickey, you knew when you were discussing with Mr. Zabel—withdraw that.

The Court: I didn't hear that.

Mr. Corinblit: I withdraw the question so it is not necessary.

The Witness: I didn't hear it either.

Mr. Corinblit: I withdrew the question.

Q. (By Mr. Corinblit): Now, just one other fact and perhaps this is a matter of stipulation.

The date upon which Fox no longer had an interest in the Loew's State Theatre is what date?

Mr. Johnston: Some time in November of 1949.

Mr. Corinblit: And thereafter either the Loew's Company for a short period of time or the United Artists Theatre Circuit, Inc., isn't that correct?

Mr. Johnston: That is not in accordance with my understanding when you put it "either."

After Fox was evicted from the Loew's State Theatre for a period of time Loew's operated the theatre themselves. Then subsequent to that United Artists Theatre Circuit operated the theatre but those precise dates I cannot give you because I don't know.

(Testimony of George A. Hickey.)

Mr. Corinblit: All right. I have no further questions of Mr. Hickey. [468]

Cross Examination

Q. (By Mr. Mitchell): Now, Mr. Hickey, you have been asked a great many questions about the first run play-off in Los Angeles between 1945 and 1949, but the period in question in this lawsuit has just been touched upon. We are going to talk about 1950 and 1951.

The theatres available to play major product first run Los Angeles downtown were the Loew's State, which you think is the best theatre——

A. Right.

Mr. Corinblit: Just a minute. Your Honor, I object to this. I think Mr. Hickey has testified he never tried to sell these theatres. They would hardly be available to him.

The Court: Overruled.

Q. (By Mr. Mitchell): Was the Los Angeles Theatre a showcase theatre in those two years?

A. The Los Angeles Theatre, yes.

Mr. Corinblit: Just a minute, your Honor. I am sorry. I wonder if we could have a definition of the term showcase.

The Court: Yes, let's get a definition.

Q. (By Mr. Mitchell): Tell the jury what a showcase theatre is, Mr. Hickey. [469]

A. I beg your pardon?

Q. Will you tell the jury what a showcase theatre is?

(Testimony of George A. Hickey.)

A. A showcase theatre is a theatre that is well equipped, well run, kept clean, and a theatre where you and your family would like to go, and a place where we would like to present our pictures to the public.

We don't like to go into theatres that are not well kept. We don't like to go into theatres that are not run properly and managed properly.

We like to go into a theatre that you would like to bring your family to and one where there is a manager there to take care of the people coming in and out.

Q. Does location have anything to do with a showcase?

Mr. Corinblit: Just a minute, your Honor.

The Witness: The location of the Loew's State Theatre downtown in my opinion——

Q. (By Mr. Mitchell): I am talking about the location of a theatre having anything to do with it being a showcase theatre. A. Oh, yes.

Q. Just talking about showcases generally. We will come to theatre by theatre in a moment.

A. The location of a theatre has a great deal to do with it being a showcase theatre.

Q. Explain that. [470]

A. Well, for instance, you take the Loew's State downtown. There are two theatres downtown that in my opinion are the two best theatres in the downtown district. One of them is the Loew's State Theatre and the other theatre is the Los Angeles Theatre.

(Testimony of George A. Hickey.)

Now, the Los Angeles Theatre is a nice theatre, but it is in the middle of a block, right off of Seventh.

The Loew's State Theatre is right on the corner of Seventh and Broadway, and it has got 400 more seats than the Los Angeles Theatre. That has a great deal to do with its being a first-class showcase.

So my preference in the City of Los Angeles downtown for a showcase theatre is the Loew's State Theatre, and that is where I always wanted to play my pictures. But when the theatre was leased and run by Fox, they naturally wanted the best theatre, too, so they put their pictures into the Loew's State Theatre. The building belonged to us, the theatre belonged to us, but they wanted the best theatre, so they put their pictures in there for a long, long time.

When they found out——

Q. The theatre was leased to Fox West Coast?

A. Yes, it was leased to Fox West Coast by our company. When they found out they were going to lose the lease on the Loew's State Theatre, a short time before that they started to run their pictures in the Los Angeles Theatre, to [471] build the Los Angeles Theatre up, if they could. So they run them there.

Then when they lost their lease, I was fighting for years to get our pictures into the Loew's State Theatre, and they would never put them in there, so I was forced to go into the Los Angeles Theatre,

(Testimony of George A. Hickey.)

but when they lost their lease, they had no room in the Los Angeles Theatre for our pictures, and we could easily get them in the Loew's State Theatre. So for a short period of time our company run the Loew's State Theatre.

And then I believe they leased the theatre to the United Artists Theatre Corporation. I believe that is true. I don't have anything to do with leasing the theatres. That is all handled in New York.

Q. What does the playing of a Loew's picture in what you consider the best theatre in town, downtown, the Loew's State, what does that do for Loew's pictures?

A. Well, I will tell you what it does for Loew's pictures. Do you want me to connect—I should connect two theatres in that statement.

Q. All right.

A. I think, if I might say so here, that the Chinese Theatre on Hollywood Boulevard is the best theatre on Hollywood Boulevard, and that is owned by the Fox corporation. I would like to get my pictures in the Chinese Theatre. But the [472] Chinese Theatre was closed to me because the Fox company run their own pictures in the Chinese Theatre.

The only theatres then open for me to run my pictures in in Hollywood was the Egyptian Theatre, which happened to be owned or run by the United Artists Corporation. It just so happens that both theatres then, the State downtown and the Egyptian

(Testimony of George A. Hickey.)

Theatre in Hollywood was run by the same corporation.

Now, the other theatre over in Hollywood that I would take would be the Paramount Theatre, but the Paramount Theatre was closed to me because they run the Paramount pictures. So I couldn't get in there.

The next theatre, which was a second, third or fourth rate house, was the Vogue Theatre, or the Iris Theatre or the Hollywood Theatre or the Hawaii Theatre.

I couldn't get the Pantages Theatre, which is on Hollywood Boulevard, because they run their own pictures, the RKO pictures. They run them in downtown RKO Theatre, and they run them in the Pantages Theatre in Hollywood.

So I chose to take the State downtown and the Egyptian Theatre in Hollywood.

Q. Now, Mr. Hickey, what I want you to tell me is what the playing of your pictures in two theatres like those would do for Loew's pictures.

A. If you will pardon me, I am going to tell you that, but I can't tell it all at once. [473]

Q. All right.

A. I will have to tell it my way.

For instance, we take a theatre downtown, the State, and the Egyptian Theatre in Hollywood. If we can play those theatres and play all of our pictures in those theatres, we can take and make those theatres very valuable for every theatre in the city of Los Angeles and in fact in the county.

(Testimony of George A. Hickey.)

And not only in the county but in adjacent cities to Los Angeles.

Q. (By Mr. Mitchell): What do you mean "make available to the other theatres in Los Angeles"?

A. Well, I am going to tell you that, too, if you let me. I am going into this thing and while I am on it, I am going to tell you just what is in my mind.

We have often taken pictures and put them in those two showcases and we have spent more money on advertising than we ever took out of both of them put together for film rental.

And the reason we do that is not so much to make any money on those two theatres, because generally speaking we lose money because our advertising is so big that we don't get enough film rental out of both of the theatres to make it worthwhile.

But why we use the theatres for a showcase is this. We go into the rest of the territory then with the pictures. [474] We go to our neighborhood, my neighborhood and your neighborhood and the other fellow's neighborhood and they all have nice theatres in these neighborhoods, and after you exploit them in the State and the Egyptian everybody knows it then because they are exploited well. We spend a lot of money. We spend as high as 40 and 50 thousand dollars advertising a picture in the city of Los Angeles.

Sometimes we don't get 40 or 50 thousand dol-

(Testimony of George A. Hickey.)

lars in the first two theatres that we use as showcases to pay that bill, but we do get it from the neighborhood houses and the adjacent cities to Los Angeles by doing that.

That is the reason we use the two showcases, two theatres.

Now, you take Guys and Dolls. We run Guys and Dolls in the Paramount Theatre in Hollywood. We run it for four months.

Q. (By Mr. Mitchell): That is since 1951? That is a recent picture?

A. Yes, that is a recent picture.

We spent—I have the story of that in my pocket if you will let me read it.

Q. We are interested in the period 1950 to 1951, Mr. Hickey. Let us stick to 1950.

A. You want to stick to that?

Q. That is the only period involved in this lawsuit in my opinion. [475]

A. I see. Well, we will stick to that and I don't know as I could say any more about that.

Q. You say you like to play in these two showcase theatres. Why don't you play day and date in theatres in Inglewood or Westchester or Pasadena?

A. Well, I will explain that to you.

Mr. Corinblit: Pardon me, Mr. Hickey. Is your question "Why you do it now"?

Mr. Mitchell: No, why didn't he do it then. I thought I just said we were talking about 1950 and 1951.

(Testimony of George A. Hickey.)

The Witness: I will tell you why we don't do it and why we didn't do it.

You have the two showcases. You have one downtown and one in Hollywood. Now, if I was to take and run other theatres in the various neighborhoods, the same picture day and date with downtown and Hollywood, there wouldn't be enough people come from each one of those areas to make any great difference to the theatre there.

In other words, if you had a theatre over here there wouldn't be enough people come from, we will say Westwood, to go to Hollywood to see the picture to hurt the Westwood theatre.

There would be only a certain percentage and I wouldn't want to say what percentage would come from there. It might be five per cent. It might be ten per cent. But there would [476] be a percentage of people that will not wait to see a good picture until it comes to their neighborhood. So they would, a certain percentage, would leave that area.

There would be another certain percentage leave another area. We will say Encino down in the Valley. There would be a certain percentage go into Hollywood and that would happen all over the city and in all the different areas and it wouldn't hurt any one of those areas or those theatres in those areas, because there wouldn't be enough people come from each area to make any difference to the theatre in that area.

But, if you would take and figure it all up it would probably run into 40 or 50 per cent of the

(Testimony of George A. Hickey.)

showcase business that would come from a lot of areas around Los Angeles, and if you take that away from your showcase in Hollywood and your showcase downtown, you would ruin their business and they wouldn't make any money and it wouldn't hurt the other fellow either.

So, why isn't it all right to have two showcases and advertise it so the theatres in the various areas will make money when they get the picture?

If we can spend 40 and 50 thousand dollars as we very often do, and we spent—I know we spent \$48,000 on *Guys and Dolls*—

Q. (By Mr. Mitchell): Let us stay with 1950 and '51. [477]

A. Pardon me. I—well, that goes for downtown Los Angeles, too.

You have all of the east side. You have got all of those—you have got Pasadena. It wouldn't take over twelve minutes to come in on the highway.

Q. Freeway.

A. Or speedway—freeway from Pasadena to Loew's State Theatre, because I have driven it and I didn't break any laws, either.

You can come in easy in 15 minutes.

Now, there is a certain number of people that will come from Pasadena to see the pictures in Loew's State Theatre but not enough to hurt any of the theatres in Pasadena. But if that amount—if that number of people come from all these theatres,—come from all of these various areas, I should say, around East Los Angeles and Whittier and out

(Testimony of George A. Hickey.)

that way, if you take that away from the Loew's State downtown, the Loew's State will lose money and we are spending 30 and 40 and 50 thousand dollars trying to advertise it, so when the pictures get to those areas it will be worth more money.

It has proven out that it is worth more.

In *Romeo and Juliet* we spent \$37,000 and we didn't do \$37,000 on the run of *Romeo and Juliet*, but we spent it.

But, the other theatres got the benefit of our advertising. [478]

Mr. Corinblit: May we have the date of *Romeo and Juliet*? What is the date on that, Mr. Hickey?

The Court: What was the date of the *Romeo and Juliet* picture?

The Witness: Well, that happened to be a way back, but I get enthused. I get enthused about it and I could tell you lots of things, lots of reasons why I do things and they would make sense. But it is hard for me—I am just like the—probably like a lot of other people. I jump the gauntlet, and I am sorry.

The Court: With that apology, I think we will take our morning recess.

Ladies and gentlemen of the jury, we are about to take another recess and it is my duty to admonish you that you are not to discuss this case among yourselves, you are not to permit anyone to discuss it with you and you are not to formulate or express any opinion until the case has been finally submitted to you.

(Testimony of George A. Hickey.)

With that admonition we will now recess until 15 minutes after 11:00 o'clock.

(Short recess.) [479]

The Court: Is it stipulated the jury is present and in the box?

Mr. Mitchell: So stipulated.

Mr. Corinblit: So stipulated.

Q. (By Mr. Mitchell): Mr. Hickey, you spoke about the number of dollars you spent on advertising pictures in the showcase theatres. Was there any other form of advertising that was accomplished by showcasing your pictures?

A. Any other form?

Q. I am speaking of word of mouth advertising.

A. Oh, yes.

Mr. Corinblit: Your Honor, I object to that as certainly leading and suggestive.

The Court: Overruled. You can answer.

The Witness: The reason that we advertise pictures is because if you have a good picture and you properly advertise it, the word of mouth will bring you business. If you have a bad one, why, you don't go so heavy on the advertising.

The Court: You shut people up, do you?

The Witness: That's right. So we do the best we can and we spend a lot of money with big pictures, because the word of mouth means a great deal, and that is the reason we advertise pictures and spend \$40,000 and \$42,000 on them. We know we are spending more than we are going to get out of [480] the rental in the showcases, but we

(Testimony of George A. Hickey.)

depend upon the outskirts and the cities adjacent.

We even go as far as Phoenix, Arizona, Tucson, Arizona, the papers from here go there. That is the reason we do great advertising, because we know if we played pictures in Tucson and Phoenix before we played them here, our grosses are very, very bad.

So we try to hold the pictures back until after they are released and advertised here in the two showcases, and then we release them there.

That is what word of mouth advertising does. If you go to see a good picture and you like it, you will tell others, and that is the reason for advertising, and that is the reason for using two showcases.

Q. (By Mr. Mitchell): You also hold your pictures back in Los Angeles metropolitan area until after the two showcases have accomplished this purpose?

A. Oh, yes, because the word of mouth in the showcases, your first runs, your advertising, when the pictures go out into the neighborhoods and into the towns adjacent to the city, they are worth a great deal more then to us and to the theatres than they are before.

Q. Now, Mr. Hickey, using your idea of showcase, which you have explained to us now for 15 minutes or so, do you consider the Loew's State Theatre a showcase theatre? [481]

A. I consider the Loew's State Theatre downtown the best showcase theatre in the city of Los Angeles.

(Testimony of George A. Hickey.)

Q. How about the Los Angeles?

A. I would consider that a fairly good theatre, but I would prefer and feel that the Loew's State is the finest showcase downtown. [482]

Q. Well, is the Los Angeles what you would call a showcase theatre? A. Yes.

Q. Is the RKO Theatre downtown, the RKO Hill Street, at 8th and Hill, a showcase theatre?

A. It is a nice theatre but I wouldn't say it was a showcase theatre.

Q. Is the Warner Theatre at 7th and Hill a showcase theatre?

A. No, it isn't. I wouldn't say it was a showcase theatre because there has been several visits I made to the Warner Theatre.

That theatre didn't impress me any great deal. It didn't impress me at all.

Q. How about the Paramount Theatre with the 3000 seats at 6th and Hill?

A. The Paramount Theatre is a nice theatre, but for a showcase I would say no, because the location is bad.

Q. Not a good showcase for your pictures?

A. Not a good showcase for our pictures, no.

Q. Paramount shows its pictures there?

A. Yes. It is a nice theatre.

Q. How about the Orpheum?

A. Huh. The Orpheum Theatre in my opinion is a third or fourth rate theatre. Today they will run a show in there [483] and next week they will

(Testimony of George A. Hickey.)

be running vaudeville, and the following week they will run a picture.

Q. How about the United Artists Theatre over on Broadway near 10th, I guess it is?

A. No, that isn't a showcase. It isn't a good location. It is a nice theatre, but if that was in a neighborhood it would be a swell theatre for a neighborhood, but it is a bad location.

Q. All right. Now, in 1950 and 1951 the Loew's State was operated by United Artists Theatre Circuit? A. I believe so, yes.

Q. And the Los Angeles Theatre at that time was operated by Fox West Coast?

A. That is correct.

Q. And the RKO Theatre was operated by the RKO Theatre Company? A. That is correct.

Q. And the Warner Theatre was operated by Warner Bros.? A. Correct.

Q. And the Paramount Theatre put its pictures in the Paramount which was operated by Fanchon & Marco? A. That is correct.

Q. And the Orpheum was operated by a man named Corwin?

A. Sherrill Corwin, yes. [484]

Q. And the United Artists was also—excuse me. And the United Artists was also operated by United Artists Theatre Circuit?

A. That is correct.

Q. And it played Universal pictures principally?

A. Well, to be honest with you, I don't know.

(Testimony of George A. Hickey.)

I imagine they played some of the small company pictures.

Q. All right. Now, I would like to take Plaintiff's Exhibit 46-A-4 up with you, Mr. Hickey.

This is the Loew's play-off in 1949 and 1950 and during the early part of 1949 it shows that all of your pictures were playing in the Los Angeles, Wilshire and Egyptian. Is that right?

A. That is correct.

Q. Until we get down to July 1st, and then this shows the picture Edward, My Son playing in the Four Star.

Tell me about the Four Star Theatre and why you played Edward, My Son in the Four Star Theatre. You played it all alone there, isn't that right?

A. That is right.

Q. Now, tell me why.

A. Well, once in a while we have a problem child and when we have a problem with a picture we put it in a theatre like the Four Star and advertise it and try to build it up.

The Four Star Theatre has a very small overhead. It [485] doesn't cost much to run it and we generally run it for eight or ten weeks and in that way we get a fairly good rental.

But if we should put that into a showcase we couldn't spend the money on it that would do it any good.

It just wouldn't go in a showcase. So, we have to pick certain pictures that are problems, and we have to put them in a theatre like the Four Star.

(Testimony of George A. Hickey.)

Q. Well, what made—what do you mean by “a problem picture” in respect to *Edward, My Son*?

A. Well, it is more or less of an arty picture. You know, more or less an art picture.

Art Pictures will go in the Four Star when they wouldn't go in any other theatre.

Q. All right. Then except for the playing of *Edward, My Son* down through October, you continued to play your pictures in the Los Angeles, Egyptian and Wilshire Theatres, right?

A. Yes.

Q. Then on October 10th, you made a picture called *Intruder in the Dust*, alone at the Four Star?

A. Yes.

Q. An exclusive run? A. Yes.

Q. Why did you play *Intruder in the Dust* at the Four Star? [486]

A. Well, that is another problem picture that we have got to get a long run on and the Four Star was suited for that kind of a picture. They have that kind of patronage there. [487]

Q. All right. Then commencing in January 1950, you played your pictures for a period of time in the Loew's State and the Egyptian, right?

A. That is correct.

Q. And those were then operated, you have testified, by United Artists? A. That's right.

Q. United Artists Theatres Circuit?

A. Yes.

Q. You continued that until June 20, 1950, and then I see the picture *Asphalt Jungle* playing in

(Testimony of George A. Hickey.)

the Orpheum and the Hawaii. How did you happen to play Asphalt Jungle in the Orpheum and Hawaii?

A. Well, in the Orpheum and Hawaii, the reason the pictures were played there was this. For months Mr. Corwin and Mr. Rosenberg, who run that theatre at the time——

Q. The Orpheum?

A. The Orpheum, were asking me for pictures, and so I told them that we would be glad to give them pictures, but they would have to bid for them. So they finally did bid for them.

Q. Bid against United Artists Theatre Circuit?

A. They bid against the United Artists Theatres. If I remember correctly, the United Artists got pretty mad about it and they told me that it was their understanding that they were [488] to get Loew's Incorporated or get Metro-Goldwyn-Mayer pictures, and I said, "There is no such understanding and you can't have them unless you bid for them the same as the Orpheum."

I believe at that time they closed their theatre for a period of 30 days because I wouldn't agree to give them the pictures.

I said, "The pictures of ours can be run in any theatre that wants them and any theatre that will bid for them, and any theatre that will pay me the proper terms can get them."

Finally they opened up their theatre and they bid for them against the Orpheum Theatre.

(Testimony of George A. Hickey.)

Q. Not against the Orpheum, you don't mean. Against the Loew's State?

A. Well, I mean the Loew's State bid and the Orpheum——

Q. Loew's State bid against the Orpheum?

A. That's right, and the Orpheum bid against Loew's State. I am positive and quite sure at this time that the Orpheum received at least 40 per cent of their playing time from—beginning, I believe, 1950 to 1951, they have gotten a lot of our pictures, and at least 40 per cent of their playing time during that period was our pictures.

Q. All right. Now, according to this record, the first one, Asphalt Jungle, in June 1950, that played the Orpheum and Hawaii. [489]

A. That's right.

Q. How did you happen to play the Hawaii Theatre? That is on Hollywood Boulevard, isn't it?

A. That's right. Well, the Hawaii Theatre played it because we didn't get a better bid in Hollywood. They had the best bid.

Q. The next picture that started June 4th, Crisis, that played what theatres?

A. That played Loew's State and the Egyptian.

Q. On the bid? A. Yes.

Q. And the next picture is Father of the Bride. Was that a good picture?

A. That was a good picture. That is one of the best pictures we made during that period.

Q. Where did that play?

A. That played in the Orpheum and the Hawaii.

(Testimony of George A. Hickey.)

Q. Did they bid for that picture? A. Yes.

Q. And won it on a bid?

A. Yes. Loew's State bid and the Orpheum bid.

Q. And the Orpheum won?

A. And the Orpheum won.

Q. The next picture, July 14th, Happy Years, where did that play? [490]

A. State and Egyptian.

Q. The next picture, July 15, Life of Her Own, where did that play?

A. That played Loew's State and the Egyptian.

Q. The next picture, Three Little Words, where did that play?

A. Played the Loew's State and the Egyptian.

Q. The next picture, Skipper Surprised His Wife, where did that play?

A. Orpheum and Hawaii.

Q. The next picture, Mystery Street, where did that play?

A. That played at the Orpheum and Hawaii.

Q. And the next picture, Duchess of Idaho, where did that play?

A. That played in the Orpheum and Hawaii.

Q. The next picture, Summer Stock, where did that play?

A. That played Loew's State and the Egyptian.

Q. The next picture, Stars in Her Crown—is that it? A. Yes, Stars in Her Crown.

Q. Where did that play?

A. Orpheum and Hawaii.

(Testimony of George A. Hickey.)

Q. The next picture is *The Next Voice You Hear*. Where did that play?

A. That played at the Four Star. [491]

Q. How did that happen to play at the Four Star?

A. That played at the Four Star because it was one of those problem pictures that lent itself to that kind of a run, so we run that in the Four Star. I am not positive about this, but I would say that was about eight weeks.

The Court: Was the picture given to the Four Star on bid or did you put it over there designedly because it was a problem picture?

The Witness: We have everybody bid on every picture in the city of Los Angeles.

Q. (By Mr. Mitchell): At least during 1950.

A. Yes.

The Court: And the Four Star outbid—

The Witness: Four Star outbid, because nobody else wanted it. It was one of them problem things.

The Court: You recognize a problem when you see one, do you?

The Witness: Yes, sir.

Q. (By Mr. Mitchell): The next picture—now we are up into September—the next picture is *Lady With a Passport*.

A. *Lady With a Passport*. That played at the Orpheum and the Hawaii.

Q. The next picture is *Toast of New Orleans*.

A. *Toast of New Orleans*, that played Loew's State and the Egyptian. [492]

(Testimony of George A. Hickey.)

Q. The next picture is Devil's Doorway.

A. That played in the Orpheum and Hawaii.

Q. The next picture is To Please a Lady.

A. That played the State and Egyptian.

Q. The next picture is The Miniver Story.

A. That played the State and Egyptian.

Q. Right Cross. A. Orpheum and Hawaii.

Q. The next picture is Dial 1119.

A. Orpheum and Hawaii.

Q. King Solomon's Mines?

A. State and the Egyptian.

Q. Two Weeks With Love.

A. That played the Loew's State and Egyptian.

Q. The next one is Magnificent Yankee.

A. Four Star.

Q. How did that happen to play in the Four Star?

A. Another problem. We don't have them very often, but they do happen.

Mr. Corinblit: May I ask, was that on a bid?

The Witness: I beg your pardon?

Mr. Corinblit: Was that on a bid?

The Witness: Yes. Everything, it is my understanding that we bid on everything. If we have a picture going in any theatre, we either send out letters or we call [493] them on the phone and we ask them if they are interested in such-and-such a picture and they will say yes or no, and if they are going to bid on it, they will send the bid in, and if they are not going to bid on it, they will say, "No, we are not interested." [494]

(Testimony of George A. Hickey.)

Q. (By Mr. Mitchell): This Magnificent Yankee was the picture on the life of Oliver Wendell Holmes, Justice Holmes?

A. Yes, that is the picture that——

Q. Lawyers Are Problems or Judges Are Problems?

A. The masses are not interested in it.

Q. The next picture is Pagan Love Song.

A. That played Loew's State and the Egyptian.

Q. All right. Now we are up to January 1951 and the first picture of that year, Mr. O'Malley and Mrs. Malone, where did that play?

A. Orpheum and Hawaiian.

Q. The next picture, Ground for Marriage?

A. Loew's State and Egyptian.

Q. The next picture is Kim.

A. Loew's State and the Egyptian.

Q. The next picture is Watch the Birdie.

A. Orpheum and Hawaiian.

Q. The next picture is Cause for Alarm.

A. Loew's State and Egyptian.

Q. The next picture is Mutiny on the Bounty.

A. Orpheum and Hawaiian. The Orpheum played that and——

Q. Was that a reissue at that time?

A. Yes, it was a reissue and they played that with [495] Day at the Races and I believe, I am not positive about that, but I believe that they both played together, but I am not sure. They might have. One of them might have played it in the Hawaiian and the other might have played it in

(Testimony of George A. Hickey.)

the Orpheum, but the two pictures were played in either one of those theatres.

Q. Was Day at the Races also a reissue?

A. Yes.

Q. The next picture is Three Guys Named Mike.

A. Loew's State and the Egyptian.

Q. The next picture is Inside Straight.

A. Loew's State and the Egyptian.

Q. The next picture is Vengeance Valley.

A. Hawaii and Orpheum.

Q. The next picture is Royal Wedding.

A. Loew's State and Egyptian.

Q. The next picture is Father's Little Dividend.

A. Loew's State and the Egyptian.

Q. The next picture is Painted Hills.

A. That played in the Loew's State.

Q. The next picture is Soldiers Three.

A. Egyptian.

Q. Alone. Is that another one of those reissue things?

A. Now, the same thing might apply to that too, because I am not sure whether they played together or not. [496]

They might have played together because I am not positive about that, but they played in those theatres. Painted Hills played in the State and Soldiers Three played in the Egyptian.

Now, it might have been that we sold the State one of them as a second feature and we sold the Egyptian the other as a second feature, but I

(Testimony of George A. Hickey.)

wouldn't know that without looking up our records in our office.

Q. Now, we are up to April 1951 and from that time on until through September 1951 the record here shows that your pictures played in the——

A. State and Egyptian.

Q. State and Egyptian. Can you explain why we don't find any more Orpheum and Hawaii in that late period of 1951?

A. Yes. The Hawaii—the Orpheum never had a policy. They never had a set policy in their theatre. They would try pictures for a while. And then they would try vaudeville for a while and then they would try shows for a while. You never knew when you went to the Orpheum what you were going to see unless you read it in the papers before you went there.

They never had a set policy at any time and they tried everything and nothing seemed to be successful. So, from that period on they stopped bidding. They didn't bid any more. And they never asked for any more of our pictures.

But we would send the bids out and we do to this day.

Q. Let us stick with 1951. [497]

A. All right. We sent bids out throughout all that period and they never bid on them.

Q. After the spring of 1951?

A. That is true.

Q. All right. Now, with respect to these suburban theatres in these suburban cities such as

(Testimony of George A. Hickey.)

Inglewood and the Westwood area, Burbank, Glendale, Pasadena, Belvedere Gardens, Huntington Park—do you consider the theatres in those areas in substantial competition with the Hollywood and downtown Los Angeles first run?

A. Well,—

The Court: You can answer that question yes or no and then you may explain your answer.

The Witness: I would like to have you ask me that again, if you will, please.

Mr. Mitchell: Will you read it, Mr. Reporter?
(Question read.)

Q. (By Mr. Mitchell): I mean on first run. If they were playing first runs would they be in substantial competition with the downtown and Hollywood theatre? A. (No answer.)

Q. Do you understand my question?

A. I do, yes, but they would be in a way substantial competition.

Q. Explain that. [498]

A. You see, there is a certain number of people, as I said before, there is a certain number of people come from these various areas and some of them would go downtown and some of them would go to Hollywood.

Now, if you take away, as I said before and I am repeating myself now, if you take away that amount of money from your showcase run you are just going to put the showcase theatre in the red. We are not going to get any money out of it. And the areas from which they come there is not enough

(Testimony of George A. Hickey.)

people to leave those areas to make any difference in the grosses when the picture gets to those areas.

Q. You were asked whether during the period—I am not sure whether we ever got up to 1950 and '51, but I will ask you if you can explain why, during 1950 and '51 you didn't sell any pictures first run Los Angeles to Fox West Coast.

A. (No answer.)

Q. To the Los Angeles Theatre?

A. Well, you can't sell a picture that has got plenty of—you can't sell a theatre that has got plenty of pictures. They run their own products so if they are all—if their dates are all filled up and they run their own pictures you can't get in there.

Q. And did Fox West Coast have any other theatre in Los Angeles suitable for Los Angeles first run except the Los Angeles Theatre during—

A. Yes.

Q. During 1950 and '51?

A. Yes. They have a beautiful theatre in Hollywood.

Q. I mean downtown Los Angeles.

A. No. The Chinese,—no, no, no, the only theatre downtown Los Angeles, that is in my opinion a showcase, would be the Los Angeles Theatre. That, of course, is outside of the State—the State in my opinion is the best theatre. They have the best location and have more seats by about 400.

Q. Let us direct your attention, Mr. Hickey, to 1950 and '51 to the first subsequent run, the 7-day

(Testimony of George A. Hickey.)

run in the Inglewood or, we will call it the Inglewood-Westchester area. You understand where I am talking about? A. Yes.

Q. How did you license your pictures on that run in that area?

A. Well, we gave Inglewood 7 days after downtown.

Q. And how did you offer your pictures in that Inglewood area?

A. How did we offer them? They bid for them there.

Q. What are the mechanics that you go through?

A. We just told them they would have to bid in order to get the pictures and they just bid.

The Court: What do you mean? Do you mean you told them that they had to bid? Did you send them a notice? [500]

A. Yes, we notified them that they would have to bid for the pictures. [501]

The Court: Did you have a form of notice that you sent out to each one of these theatres soliciting bids?

The Witness: You see, we don't bid, your Honor, unless somebody asks us to bid in the town. Now, we were playing our pictures in the Academy Theatre in Inglewood and there was some other exhibitor wanted our pictures. Well, the Academy Theatre in Inglewood had been running our pictures for a long, long time, so we said, "All right, if you want our pictures you will have to bid for them."

They said, "All right, we will bid for them."

(Testimony of George A. Hickey.)

So we notified West Coast that they would have to bid, too, so that is how bidding starts.

The Court: Then the only two houses bidding against each other were those. You didn't send out your notice of bids to all the other houses?

The Witness: Yes, everybody in the city then can bid, anybody can bid. When we establish bidding in a city, everybody and anybody in that city can bid.

The Court: When did you establish bidding in Inglewood?

The Witness: Well, your Honor, I couldn't remember those dates, but it has been quite some time.

The Court: With reference to the years 1949, 1950 and 1951.

The Witness: We start bidding in Inglewood——

Mr. Mitchell: Perhaps I can help him out with the date.

Q. If I tell you that the La Tijera Theatre adjoining Inglewood opened its doors in early 1949, that is Bill Kupper's theatre, would that help you fix the date when you started bidding?

A. Yes. He asked us. I think he was the first one that asked us to bid. He wanted to bid on the pictures, he wanted Metro-Goldwyn-Mayer pictures, so that is when the bidding started. I recall that now.

The Court: Up to that time you had been exclusively in one theatre.

The Witness: That's right.

(Testimony of George A. Hickey.)

Q. (By Mr. Mitchell): All right. Now, when you established bidding at the request of Mr. Kupper in the La Tijera Theatre just down the street from the Paradise—is that right?

A. That's right.

Q. Well, there wasn't any Paradise in those days.

The Court: Mr. Mitchell, what do you mean by down the street? Was it a block, half a block, or a half a mile?

Mr. Mitchell: Have we got those mileages yet?

Mr. Westbrook: No.

The Witness: There was no Paradise Theatre at that time. [503]

Mr. Corinblit: It is close to three miles.

Mr. Westbrook: What mileage is that you say?

Mr. Mitchell: No, it isn't close to three miles from the La Tijera to the Paradise Theatre.

Mr. Westbrook: It is 1.9, I think, or 2.1.

Mr. Corinblit: We are not sure of it either. We will check that, though.

The Court: Mr. Mitchell, I objected to your saying down the street.

Mr. Corinblit: Now it is down the miles, your Honor.

Mr. Mitchell: Maybe we can get a yardstick here and figure it out right now.

The Court: Down the street was miles, then. It wasn't feet.

Mr. Mitchell: No, it wasn't feet. According to

(Testimony of George A. Hickey.)

the legend, the scale on the map, it is less than two miles.

The Court: That is what you meant by down the street?

Mr. Mitchell: That's right.

The Court: All right, just so we understand.

Q. (By Mr. Mitchell): The La Tijera asked you to bid and there wasn't any Paradise Theatre at that time. Do you remember other theatres that you invited to bid? [504]

A. Yes. There was the Fifth Avenue. There was the Academy, the Fifth Avenue, the Egyptian.

Q. Not the Egyptian.

A. The United Artists. Pardon me.

Q. How about the Fox Inglewood?

A. Fox Inglewood, yes.

Q. Did you accomplish this invitation, as Judge Westover asked you, by telephone or by letter?

A. Well, that is something I couldn't answer, because I tell the manager what to do in that case and he handles that.

Q. Now, the Paradise came into existence in August 1950. Did you invite the Paradise to bid in this bidding situation? A. Yes.

Q. And did they actually bid?

A. They bid on—I don't know—two or three pictures. I don't remember at this time whether they got any or not. I have an idea they got two, but I am not positive about that.

The Court: Mr. Hickey—just a minute, Mr. Mitchell—let me be sure we understand. I think

(Testimony of George A. Hickey.)

I understand, but let me be sure. Bidding was started before the Paradise Theatre was built?

The Witness: That is correct. [505]

The Court: After the Paradise Theatre was built, then you offered pictures on a bid exactly the same as you did with these other theatres?

The Witness: That's right. That is correct.

The Court: But bidding in this area had actually started before the Paradise Theatre was built.

The Witness: The Paradise Theatre asked us, they asked me for a seven day run and I refused to give it to them. The reason I refused to give it to them is because, as I stated a little while ago, we have no seven day run in the city of Los Angeles and we use these two showcases to exploit our pictures so they will be well received and well patronized, when they get into those neighborhoods.

The Paradise Theatre is very close to a great many of these theatres in Inglewood. They are substantially competitive to the theatres that were bidding in Inglewood.

So I said, "All right, I will make an exception with you and I will let you bid for them if you want to, but we cannot grant you a seven day run," because if I granted them a seven day run, then the Valley would want a seven day run, say the Encino Theatre in the Valley would want a seven day run, and the Picewood would want a seven day run in Los Angeles, the Meralta Theatre in Culver City would want a seven day run. All these theatres

(Testimony of George A. Hickey.)

in these various areas around here would want a seven day run. [506]

If I gave it to him, what reason and excuse would I have not to grant the same privilege to everybody else? It would upset our plan and cause us a great deal of lost revenue in this city, and I couldn't do it.

The Court: Mr. Hickey, do I understand the Paradise wanted a seven day run without bidding?

The Witness: Yes.

The Court: They asked for a seven day run?

The Witness: They asked for a seven day run without bidding.

The Court: Without bidding?

The Witness: And then we told them we would let them bid for the seven day run against Inglewood.

The Court: At this particular time in that area was there any theatre that had a seven day run without bidding?

The Witness: No, sir, not ours. We had no seven day runs in the city of Los Angeles.

The Court: Without bidding.

The Witness: With or without bidding.

The Court: What was the run in Inglewood?

The Witness: Inglewood, we don't consider Inglewood Los Angeles. That was a seven day run in the city of Inglewood.

Mr. Mitchell: I think I can show you what he is saying to you. [507]

Q. Westchester is a part of the city of Los

(Testimony of George A. Hickey.)

Angeles technically, is that what you are saying? You are saying the Paradise is in the city of Los Angeles?

A. Yes, the Paradise is in the city of Los Angeles.

Q. Adjoining the city of Inglewood.

A. That is correct.

Q. And from a legal standpoint the Paradise Theatre is in the city of Los Angeles?

A. That's right.

Mr. Corinblit: Just a minute. We have gone through a long discussion here, which I think has been very interesting, but Mr. Mitchell is now asking Mr. Hickey to answer a question upon a legal point.

Mr. Mitchell: I think the court will take judicial notice.

The Court: I want to know this for my information and for the jury's information, because I understood Inglewood was seven days after Los Angeles, and now evidently the Paradise is seven days after Inglewood.

Mr. Mitchell: Then you do misunderstand, your Honor.

Mr. Corinblit: We will stipulate that the Westchester area as a technical matter and legal matter is considered part of Los Angeles. [508]

Mr. Mitchell: Not only considered a part but it is in the city.

Mr. Corinblit: There is no question about that.

(Testimony of George A. Hickey.)

And Inglewood as a legal matter is a separate community.

Mr. Mitchell: That is right. Now, your Honor——

The Court: Just a minute. Then you considered the Paradise Theatre as a theatre in Los Angeles and not a theatre in the Inglewood area?

The Witness: That is right. It is in the Inglewood area—it isn't in the Inglewood area the way we got it charted out. It is in the City of Los Angeles but you might say that all of those theatres over there are in the Inglewood area, but once we cross the line and give the Paradise Theatre a 7-day run then there is no reason why I can't give every theatre in Los Angeles that would ask me for a 7-day run and it would upset and cost our company a lot of money.

Q. (By Mr. Mitchell): Well, now, Judge Westover asked you a question as to whether you gave the Paradise an opportunity to bid for a 7-day run.

A. Yes, we did.

The Court: On the same terms as you did the theatres in the Inglewood area?

The Witness: That is correct.

Mr. Corinblit: With Inglewood?

The Witness: With Inglewood. [509]

Mr. Corinblit: Against Inglewood?

The Witness: Against Inglewood.

Q. (By Mr. Mitchell): The La Tijera Theatre also is in the city of Los Angeles, and adjoining Inglewood?

A. Yes, sir.

(Testimony of George A. Hickey.)

Q. And did you give the Paradise an opportunity to bid against the La Tijera?

A. Yes. Well, the La Tijera wasn't—I don't believe the Paradise was there at that time.

Q. No, no, but the La Tijera was there in 1950?

A. That is right.

Q. And '51? A. That is right.

Q. And did you give both the La Tijera and the Paradise a chance to bid for the same run?

A. Yes. We gave them both—we gave both theatres a chance to bid for the same run.

Q. Along with the Academy?

A. That is right.

Q. And United Artists in Inglewood?

A. Yes, and Fifth Avenue.

Q. Fifth Avenue in Inglewood?

A. That is right.

Q. And the Fox Inglewood in Inglewood?

A. Yes, because they are in the general area.

Q. Do you think they are competitive with each other?

A. Yes, substantially competitive to each other.

Mr. Corinblit: Your Honor, I object to that question.

Mr. Hickey stated that the reasons for the refusal as to the Paradise was because the Paradise is in Los Angeles and the Inglewood theatres are in Inglewood.

The Court: I don't know whether he testified to that or not. You may have thought he so testified.

Q. (By Mr. Mitchell): Why did you require

(Testimony of George A. Hickey.)

the Paradise to bid against these theatres, the La Tijera, the United Artists in Inglewood, the Fox in Inglewood, the Fifth Avenue?

A. Because they are all in the same area.

Q. The Academy?

A. They are all in the same area and substantially competitive to each other.

Q. What do you mean by that, "substantially competitive"?

A. I mean the farthest one away is four miles. Even the Loyola is in this.

Q. We don't need to worry about the Loyola. It is playing Fox first run. But why do you consider these other theatres substantially competitive with the Paradise?

A. Because they are all right there in the same area, three and four miles apart. Some of them two miles.

Q. What difference does that make in respect to patronage? [511]

A. It makes a lot of difference. If they will go to the better theatre—people in that area will go to the better theatre, the theatre that they like the best. For instance, we will take the Academy or the—any theatres over there.

They are so close together that the business will be divided up so that nobody will make any money.

Q. You mean if you play them all day and date? A. Yes.

Q. What do you think would happen if you

(Testimony of George A. Hickey.)

would play the La Tijera and the Paradise day and date?

A. I don't think either one of them would do sufficient business to make any money.

Q. You think they would draw off from the same area? A. Yes.

Q. What would happen if they would play your pictures day and date in the Paradise and the United Artists in Inglewood?

A. I don't think that either one of them would make any money either.

Q. Why not?

A. Well, because they are too competitive. They are in the same area and you can't run in an area like that pictures and hope to be successful. [512]

There are a lot of these fellows that ask for runs that it is murder for them. It is just terrible for them. They don't seem to realize how much money they will lose when they ask for it. But we have to—it is my job and my duty to protect the revenue of my company. I am responsible for that. And I can't do anything that is going to hurt us.

And I know when you, in a small area like that, where the theatres are all the way from two to four miles apart, and you let them run together——

Q. You mean day and date?

A. Day and date, yes. Why, it is just out of the question for them to make any money.

Q. Why do you require the Paradise to bid against the Academy?

(Testimony of George A. Hickey.)

A. Because only one of them can get it. If the Academy——

Q. Why don't you——

A. He asks for it so we let him have it.

Q. Why don't you give pictures day and date to the Academy and the Paradise?

A. Because neither one of them would make any money.

Q. Why not?

A. Because they are too close together.

Q. What effect does that have? [513]

A. Well, it would split up the business. When you split up your business, why, it is going to affect your revenue.

Q. Do you think they draw patrons from the same area? A. Certainly.

Q. Do you think people from Westchester, so-called, go to the Academy? A. I do.

Q. Do you think people from over in the area of the Academy go to the Paradise? A. Yes.

Q. Do you want to stop at this point, your Honor?

The Court: Yes, but I would like to ask the witness a question.

From something you said a little while ago I got the impression that people went to the theatre—they didn't go to the theatre to see the theatre, but they go to see the picture, don't they?

The Witness: Well, it all depends. A great many times if I want to see a picture I will pick out the best theatre to see it in.

(Testimony of George A. Hickey.)

Now, if I wanted to see a picture in Hollywood and it was playing at the Chinese Theatre, I would go to the Chinese Theatre.

The Court: I know, but supposing you have a first run [514] house and a second run house. The second run house has a first run picture. People would go to see the first rate picture, wouldn't they?

The Witness: Well, they might, or they might wait until it got into some other theatre where they would rather go to see it there.

The Court: Take down in Inglewood.

The Witness: Yes.

The Court: What is the poorest house you have in Inglewood in your opinion?

The Witness: Well, I wouldn't want to say.

The Court: All right. If you played Oklahoma in the poorest house in Inglewood the people would go to see the picture Oklahoma, wouldn't they? They wouldn't make any difference about the house.

The Witness: Well, I don't know whether they would or not. A lot of theatres—there are a lot of theatres that people wouldn't go into because they are not well kept, they are not well run.

The Court: All right. Then it is your opinion that the theatre, that is, the kind of building, the kind of equipment they have is what draws or helps to draw people into the theatre?

The Witness: No, it don't help—it helps a little, yes.

The picture has a great deal to do with it. I will agree [515] with you there, but if I wanted to see a

(Testimony of George A. Hickey.)

picture I wouldn't go into the Orpheum to see it. I would drive—if I lived in Whittier——

The Court: Even if it is *Guys and Dolls*?

The Witness: No, not *Guys and Dolls*.

The Court: Suppose it was the only place it played in Los Angeles, you wouldn't go to see it?

The Witness: I probably would if it was the only place that played it, but if I had my choice—now, you take if a picture—if *Guys and Dolls* was running in the Orpheum Theatre downtown and I lived in Whittier, and I give you my word I would drive from Whittier to see it if it was playing in the Chinese Theatre or the Egyptian Theatre or the Paramount Theatre in Hollywood. I give you my word I would drive there to see it. I wouldn't go to the Orpheum.

The Court: All right. I just wanted to know what your point of view was.

Ladies and gentlemen of the jury, again we are about to take another recess, and it is my duty to admonish you that you are not to discuss this case among yourselves, you are not to permit anyone to discuss it with you and you are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition we will now recess until 2:00 [516] o'clock p.m. this afternoon.

(Whereupon at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same date.) [517]

Friday, July 13, 1956, 2:00 p.m.

The Court: Is it stipulated the jury is present in the box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: So stipulated.

GEORGE A. HICKEY

the witness on the stand at the time of the recess, having been previously duly sworn, was examined and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Mitchell): Mr. Hickey, I will show you here a compilation taken from the bidding records of Loew's Incorporated which are here in court and ask you if this correctly shows the theatres from which bids were asked or requested, the theatres which submitted bids, and the theatres to which the pictures were awarded in the Inglewood-Westchester area from May 1, 1950, to September 18, 1951.

Mr. Corinblit: Just a minute, please. Your Honor, prior to that question there are two matters, but first I wonder if I could take Mr. Hickey on voir dire with respect to this document, please.

The Court: All right. [518]

Mr. Corinblit: Thank you.

Voir Dire Examination

Q. (By Mr. Corinblit): Mr. Hickey, have you seen this record before? A. Yes.

Q. Did you prepare it?

(Testimony of George A. Hickey.)

A. I had it prepared. I mean it was prepared in our office.

Q. Who was the person who prepared it?

A. I believe Mr. Aspell.

The Court: Will you speak up so we can all hear you, please?

The Witness: I believe it was Mr. Aspell.

Q. (By Mr. Corinblit): You are not sure?

A. No, but he is the one who would prepare it.

Q. You don't know whether he did or not?

A. Yes, he must have prepared it.

Mr. Corinblit: I will move to strike the answer.

The Witness: Yes, he prepared it.

Q. (By Mr. Corinblit): He is the one who examined the records on which this document is based, is that correct? A. Yes.

Q. All right.

A. He and Mr. Urschel. [519]

Q. He and Mr. Urschel? A. Yes.

Mr. Corinblit: All right. Fine. Thank you.

Cross Examination—(Continued)

Q. (By Mr. Mitchell): Now, does that correctly show what I have stated?

Mr. Corinblit: Your Honor, I object to the question as the witness has indicated this was prepared by some third party. The main reason for my objection, your Honor, is this. This is beyond the scope of the direct. Mr. Mitchell is now in the process of putting in part of the defendants' case. I ordinarily would have no objection if we had gone into the

(Testimony of George A. Hickey.)

matter, but we have not gone into these things, and I would like the matter to come in in a coherent way and then have the cross examination based on that, rather than the defense putting in their case at this time, including their exhibits.

Mr. Mitchell: I am not going outside of the scope of the cross examination, if you call it that, or re-direct examination at all. The plaintiff is trying to leave the impression with respect to the Inglewood area that the pictures were all licensed to the United Artists Theatre. He has been talking about a so-called split and he has asked, I don't know how many questions, about whether there was some sort of arrangement in Inglewood that made the Loew's pictures [520] all go to the United Artists Theatre.

I am going to show it just isn't so, that picture by picture, these things were bid and that they went to one theatre and then to another, and it is perfectly proper redirect examination, your Honor.

The Court: Objection overruled.

Q. (By Mr. Mitchell): Now, will you answer the question, whether that correctly shows what I have stated. Do you remember the question?

A. Yes, I remember it.

Q. Let me ask the question again. Does this correctly show in the Inglewood area, Inglewood-Westchester area, from May 1, 1950, to September 18, 1951, the theatres from which offers were requested, bids were requested, the theatres which submitted bids, and the theatres to which the pictures were awarded?

A. That is correct.

(Testimony of George A. Hickey.)

The Court: Now, may I ask a question? Do you know if bids were requested in these theatres, did you send out a written memorandum? What kind of records did you keep in your office to show that the bids were requested?

The Witness: We have the bids.

Mr. Mitchell: One by one, we have them here, your Honor.

The Witness: We have those bids. [521]

Mr. Mitchell: It is just a matter of saving ultimate time, that's all.

The Court: You have the bids, you kept a record, did you, of the bids?

The Witness: Yes, sir.

The Court: And a record of the people you requested bids from?

The Witness: That is correct.

The Court: All right. Go ahead, Mr. Mitchell. I wanted to be sure that there was a record kept.

Mr. Mitchell: That's right.

Q. Just so there will be no question here, this happens to be the picture *A Life of Her Own*. Here is a letter dated September 11, 1950. Is this the kind of a request for bids you are referring to?

A. That's right.

Q. This appears to be a request sent to Mr. Kupper.

A. That's right.

Q. He is La Tijera and Imperial Theatres.

A. That's right. We sent them out.

Mr. Mitchell: May I read this, then, into the record, so there will be no question?

(Testimony of George A. Hickey.)

The Court: Yes.

Mr. Mitchell: September 11, 1950, to Mr. W. J. Kupper, Jr., West Theatres, Inc., 6820 La Tijera Boulevard, [522] Los Angeles, California.

Over at the right-hand side, La Tijera Theatre, Los Angeles, and in the middle of the page, A Life of Her Own.

That is the name of the picture.

Underneath that, 7 days after Los Angeles first run closing or as available.

Underneath that, 14 days to play and clear over the Century Drive-In, Inglewood, 14 days from closing over the Paradise, Los Angeles, and the United Artists, Fox, Fifth Avenue, and the Academy Theatres, Inglewood; 21 days to play clear over the Plaza Theatre, Hawthorne; 28 days from closing over the Ritz or Inglewood Theatres and the Lennox Theatre, Lennox.

September 19, 1950.

Q. What is that September 19th? Is that the date when the picture would be available?

A. I believe so. [523]

Q. Now, when you refer——

The Court: May I see that for a moment, Mr. Mitchell.

Mr. Mitchell: Yes, your Honor.

The Court: Now, this was sent out to the La Tijera Theatre. What does it mean "14 days over the Paradise, Los Angeles"? What does that mean?

Wasn't this invitation for bids sent to all of the theatres regardless?

(Testimony of George A. Hickey.)

The Witness: All of the theatres in that area that were bidding.

The Court: Well, you have here "Over 14 days—14 days over Paradise." This was an invitation for a bid, wasn't it?

The Witness: No. They requested it and then we sent it out.

Mr. Westbrook: There is a similar request in there to the Paradise.

The Court: Let us have the Paradise. I want to know what that means.

Q. (By Mr. Mitchell): Does that have anything to do with clearance, Mr. Hickey, the 14 days?

A. Yes. Well, it tells them when they can play it.

Q. Explain to Judge Westover what the 14 days mean.

A. 14 days over what?

The Court: Over Paradise. [524]

Q. (By Mr. Mitchell): This is the La Tijera Theatre request for bid and it says "14 days to play clear over the Century Drive In." What does that mean?

A. Well, the Century Drive In plays 14 days—it has 14 days to play and clear.

In other words, if he gets the picture on the 10th, they have 14 days to play it or clear it within their availability.

If they have 28 days clearance, they have got 14 days to play the picture and clear it before the other fellow gets it 28 days.

Q. Before the Century gets it?

A. Yes.

(Testimony of George A. Hickey.)

The Court: Was there an identical notice sent to the Paradise Theatre?

The Witness: Yes, sir.

Mr. Mitchell: I will show that in just a moment.

Q. Now, it says here "14 days from closing over the Paradise, United Artists, Fox, Fifth Avenue and Academy."

Now, if the La Tijera gets the bid then what happens by reason of that sentence?

A. Well, they have 14 days to play it and clear it.

Read the sentence again.

Q. "14 days from clearing over the Paradise, Los Angeles, and the United Artists, Fox, Fifth Avenue and Academy [525] Theatre, Inglewood."

A. They have 14 days from the closing of the picture in the La Tijera.

Q. What do you mean? Do you mean they have 14 days from the closing?

A. They have got 14 days—they have to wait 14 days.

Q. You mean these other theatres have to wait 14 days after the La Tijera wins the bid?

A. That is right.

Q. Let us go to the Paradise request.

The Court: I notice you have a return receipt with those. Were they sent out by registered mail or anything like that?

The Witness: Some of them we do. We send them out by registered mail because sometimes the exhibitors claim that they don't get them and those

(Testimony of George A. Hickey.)

exhibitors that do that we send them registered mail so we are sure that they get them.

The Court: All I know about that is that I saw it on the La Tijera bid. I didn't know what conclusion to draw from your statement.

Q. (By Mr. Mitchell): You sent one registered mail to the Paradise, didn't you?

A. I believe so.

Q. All right. Now, this is the request to the Paradise for bid on the picture *A Life of Her Own*? [526] A. That's right.

Q. Now, if I may, I will read that one.

The Court: Read it.

Mr. Mitchell: "September 12, 1950. Mr. Marco Wolff."

Q. Who was Marco Wolff with respect to the Paradise?

A. Well, Marco Wolff owns the, or, runs the Paramount in Hollywood and did at one time run the Paramount downtown, but for some reason or other he started to buy for the Paradise. I don't know why. He has no interest in it.

Q. He was buying for the Paradise?

A. He was buying the pictures for the Paradise.

Q. All right. "Mr. Marco Wolff. 6838 Hollywood Boulevard, Los Angeles 28, California.

"Paradise Theatre, Los Angeles, Cal."

There is no dispute but that Marco Wolff was buying pictures for the Paradise in late 1950?

Mr. Corinblit: No dispute whatsoever.

Mr. Mitchell: All right.

(Testimony of George A. Hickey.)

“Picture Life of Her Own, 7 days after Los Angeles first run closing or as of availability.

“14 days to play and clear over the Century Drive In, Inglewood, 14 days from closing over the La Tijera Theatre, Los Angeles, and the United Artists, Fox, Fifth Avenue, Academy Theatre, Inglewood, 21 days to play and clear over the Plaza Theatre, Hawthorne. 28 days from closing over the [527] Ritz or Inglewood Theatres, and the Lennox Theatre, Lennox. September 19, 1950.”

Q. Now, where this says, Mr. Hickey, “14 days from closing over the La Tijera,” does that mean that if the Paradise wins the bid that it has 14 days clearance over the La Tijera?

A. No. It means that if a picture runs—this says the La Tijera, doesn’t it?

Q. Says “14 days from closing over the La Tijera.”

A. From closing over the La Tijera?

Q. Says “14 days close over La Tijera.”

A. They get 14 days of clearance after it closes.

Q. After it closes the La Tijera can’t play until 14 days has expired? A. That is right.

Q. If the Paradise gets the bid?

A. That is right.

Q. Similarly, it says:

“14 days close, 14 days from closing over United Artists, Fox, Fifth Avenue and Academy Theatres.”

A. That means those theatres can’t play until 14 days after the Paradise is closed.

Q. If the Paradise gets the bid?

(Testimony of George A. Hickey.)

A. That is right.

Q. And you give that same privilege to every theatre [528] in the area that you ask to bid?

A. Yes. It depends upon their location. Yes, sir, in that area they would get that.

Q. These theatres all get reciprocal rights?

A. That is right.

Q. And undertake reciprocal disadvantages?

A. That is right.

The Court: I understand the same letter was sent out to all of the theatres in that area?

The Witness: Everybody. The only one exception to that, if we don't like any of the bids, we turn them all down and then we re-negotiate, sometimes on the phone or talk to them personally, but the first time they go out that is the way they go out.

Q. (By Mr. Mitchell): Now, if your Honor would like to follow this, I will furnish you with a copy.

The Court: All right.

Q. (By Mr. Mitchell): All right. Now, Mr. Hickey, if you will put on your glasses again.

This starts with the picture called *The Big Hangover* in 1950.

Mr. Corinblit: Pardon me, your Honor. If we are going to go into this, I think it is outside of the scope of direct and object on that ground, but I suppose there ought to be an offer of a document in evidence if he is going to read from [529] it.

But I don't believe that this is proper examination and I object on those grounds.

(Testimony of George A. Hickey.)

The Court: I overruled that objection.

Mr. Mitchell: I will offer the document in evidence.

The Court: It may be received in evidence.

The Clerk: Loew's Exhibit K-1.

Q. (By Mr. Mitchell): All right. Now, the picture *The Big Hangover*, bids were requested from what theatres?

A. From the La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Now, so as to avoid a duplication of this, you continued to send bid letters to all of these pictures that I am going to ask you about, to those theatres until September 1950, is that right?

A. That is right.

Q. Then we will come to that in a moment. All right. Now, on *The Big Hangover* who sent in bids?

A. The La Tijera and the Academy.

Q. And who won the bid?

A. The La Tijera.

Q. All right. The next picture is *Asphalt Jungle*. Who sent in bids?

A. La Tijera, United Artists, Fox, Fifth Avenue—— [530]

Q. Wait a minute. Listen to my question. Who sent in bids? A. Let me see.

Q. The middle column is the one.

A. Oh, yes, it was the La Tijera, Fifth Avenue and United Artists. [531]

Q. And to whom was the picture awarded?

A. Fifth Avenue.

(Testimony of George A. Hickey.)

Q. The next picture is Annie Get Your Gun. Who submitted bids?

A. La Tijera, the United Artists, and the Academy, and the United Artists got the picture.

Q. The next picture is Crisis.

A. La Tijera, United Artists, and the Fifth Avenue sent in bids, and the La Tijera got the picture.

Q. The next picture is Father of the Bride.

A. La Tijera, United Artists and the Academy sent in bids, and the United Artists got the picture.

Q. The next picture is Duchess of Idaho.

A. The La Tijera, the United Artists, and the Fifth Avenue and Academy sent in bids, and the La Tijera got it, but we negotiated. We didn't like the first bid and we negotiated afterwards. That is what I was referring to a few minutes ago when I said we turned down the first bid. If there is one sent in and we don't like it, we negotiate a deal.

Q. The next picture is Happy Year. Who sent in bids?

A. The La Tijera, United Artists and Academy, and United Artists got it.

Q. The next picture is Skipper Surprised His Wife. Who sent in bids?

A. The La Tijera, United Artists, Fifth Avenue, and the [532] Fifth Avenue got it.

Q. The next picture is Stars In My Crown. Who sent in bids?

A. La Tijera, United Artists, Fifth Avenue, and the United Artists got it.

No. 15424

United States
Court of Appeals
for the Ninth Circuit

FOX WEST COAST THEATRES CORPORATION,
TWENTIETH CENTURY-FOX
FILM CORPORATION and LOEW'S, INCORPORATED,
Appellants,

VS.

PARADISE THEATRE BUILDING CORPORATION,
Appellee.

PARADISE THEATRE BUILDING CORPORATION,
Appellant,

VS.

FOX WEST COAST THEATRES CORPORATION,
TWENTIETH CENTURY-FOX
FILM CORPORATION and LOEW'S, INCORPORATED,
Appellees.

Transcript of Record

In Six Volumes

VOLUME II.

(Pages 465 to 952, inclusive)

Appeals from the United States District Court for the
Southern District of California,
Central Division

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(Testimony of George A. Hickey.)

Q. The next picture is Mystery Street. Who sent in bids?

A. La Tijera and United Artists, and then Fox withdrew their bid on the Fox Theatre, and the Academy sent in a bid, and the La Tijera. We negotiated on that.

Q. When you say the Fox Theatre, by this time, Mr. Hickey, in July, 1950, the United Artists was no longer operated by Fox. You mean the United Artists withdrew its bid? A. Yes.

Q. You say the La Tijera received the bid?

A. Yes.

Q. By negotiation? A. Yes.

Q. By negotiation?

A. Yes, by negotiation.

Q. All right. The next picture, to whom was it offered, Three Little Words?

A. It was offered to the La Tijera, United Artists, Academy.

Q. Who received the bid? [533]

A. The United Artists.

Q. The next picture is Summer Stock. Who made offers on that picture?

A. La Tijera and the United Artists and the Academy.

Q. Who received the bid?

A. La Tijera got it.

Q. The next picture is Lady Without A Passport. Who made offers?

A. La Tijera and the Academy, and the La Tijera got it by negotiation.

(Testimony of George A. Hickey.)

Q. Now we are up to that picture which opened August 9, 1950. We are up to that point.

I think we are all agreed that the Paradise Theatre opened August 23, 1950. Prior to that time had you had any conversation with Alex Schreiber, the president of the Paradise?

Mr. Corinblit: Your Honor, again this is a problem of getting a coherent picture into evidence. On direct examination I didn't ask Mr. Hickey a single word with regard to conversations with Mr. Schreiber. Mr. Schreiber will take the stand and on the defense case they can put in their examination. This permits the defense case to come in as the plaintiff's case, and it is going to extend it. I object to it on that ground.

The Court: Overruled. [534]

Mr. Mitchell: Will you read the question, Mr. Trainor?

(Question read.)

The Witness: Yes, he talked to me a few times.

Q. (By Mr. Mitchell): Do you remember when?

A. I don't remember the date, no.

Q. Well, let me show you defendant Loew's Exhibit A-10 and see if that will refresh your recollection on when Mr. Schreiber talked to you.

A. Yes.

Q. When did he talk to you?

A. Well, he talked to me about, oh, I would say March 20, 29th, something like that.

Q. 1950?

A. Yes, along in there somewhere.

(Testimony of George A. Hickey.)

Q. What did he say?

A. Well, he wanted first run.

Q. First run Los Angeles?

A. He wanted first run in Los Angeles and I wouldn't give it to him.

Q. What did you tell him you would give him?

A. I told him I would give him 7 day if he wanted to bid for it.

Q. All right. Now, I will——

The Court: Was this 7 day bidding the first offer [535] you made to him?

The Witness: No. I think the first offer we made to him was we offered him 21 days.

The Court: You didn't have a 7 day run in Los Angeles city limits?

The Witness: No.

The Court: Did you have a 14 day run in the Los Angeles city limits?

The Witness: I think we did, yes.

The Court: But you offered him 21 days?

The Witness: We offered him 21 days.

The Court: 21 days. All right.

Q. (By Mr. Mitchell): Was he agreeable to 21 days after Los Angeles?

A. Well, he was, and then he came in later and he wanted day and date with Los Angeles.

Q. At this conversation did you offer him seven days after Los Angeles on a bid against the theatres in Inglewood?

A. We told him he could bid the same as Inglewood, and that would be 7 days.

(Testimony of George A. Hickey.)

Q. The same as La Tijera? A. Yes.

Q. La Tijera was where, in what city?

A. They were in Los Angeles, but it was all in that area. [536]

Q. All right. I will show you defendant Loew's Exhibit D-3 and ask you if you recognize that.

A. Yes. That is exactly what I just said.

Q. Did you send this letter to Mr. Marco Wolff?

A. Yes.

Mr. Mitchell: I will offer it in evidence.

Mr. Corinblit: Your Honor, I don't want to say anything after your Honor's ruling on this point with respect to the defendants offering evidence and their exhibits as part of the plaintiff's case, but I don't believe that is proper. It doesn't certainly fit the ordinary test of cross examination.

The Court: It is not offered as a plaintiff's exhibit. They are offering them as an exhibit for—well, I'd better start all over again. I'm all confused.

They are offering that as a defendants' exhibit, not a plaintiff's exhibit.

Mr. Corinblit: That is correct, your Honor, but they are offering it during the course of the plaintiff's case where plaintiff has not offered such an exhibit.

The Court: I know, but you raised certain issues here. I think they have a right to combat the issue.

Mr. Corinblit: I certainly don't want to prevent the defendants from combatting any issue we have raised.

(Testimony of George A. Hickey.)

The Court: Objection overruled. It may be received in evidence. [537]

Mr. Mitchell: We offer this on redirect examination, your Honor.

The Court: All right.

Mr. Corinblit: Did I understand that you offer it on redirect?

Mr. Mitchell: That is correct.

The Court: You called the witness on cross examination.

Mr. Corinblit: Yes, your Honor. All right.

The Clerk: Loew's Exhibit D-3.

(The exhibit referred to was received in evidence and marked as Loew's Exhibit D-3.)

The Court: I might explain to the jury here some of the procedure that we follow in courts. The plaintiff ordinarily presents his evidence first. He calls his witnesses first and presents his case, but under the rules of court the plaintiff has a right to call the defendant as an adverse witness or as a hostile witness. Ordinarily the plaintiff, when he calls a witness, can't cross examine his witness. He can't lead the witness. But when he calls an adverse witness, he can cross examine that witness and he can lead that witness. He can bring out in any way he wants to the testimony of that witness.

This witness was called by the plaintiff as an adverse and hostile witness. This is one of the defendants' witnesses. [538] Ordinarily, if he hadn't been called by the plaintiff, he wouldn't show up in this case maybe for another two or

(Testimony of George A. Hickey.)

three weeks, but the plaintiff put him on the stand as an adverse witness, and he has the right to cross examine him.

Now Mr. Mitchell is taking the witness on re-direct and supposedly is refuting the testimony or clarifying the testimony which was brought out by the plaintiff in his cross examination of this witness. It is perfectly legal. It is only a question of procedure. There is nothing wrong with it.

Mr. Mitchell: Thank you, your Honor.

The Court: All right, Mr. Mitchell.

Q. (By Mr. Mitchell): Going back to your March conversation with Mr. Schreiber, did he tell you whether or not he was agreeable to that 7 day run in Inglewood-Westchester area, bidding against the La Tijera, Academy, and so on?

A. Well, he did.

Q. What did he say? A. He did bid.

The Court: No. The question is what did he say, not what he did.

Q. (By Mr. Mitchell): What did he say back in March, 1950?

A. Well, I don't think he wanted to——

The Court: No, don't tell me what he wanted to do. What did he say? [539]

The Witness: I really don't remember what he said. You now, it's hard to remember back. You have all these theatres to look after and if you would remember the conversations with every man that you talk to, you would go crazy. I can't re-

(Testimony of George A. Hickey.)

member everything that the man said, but what he wanted——

Mr. Corinblit: Your Honor, now——

The Court: I'm sorry. You can give the substance of the conversation. You can't tell what he wanted because that is a conclusion. What did he say?

Q. (By Mr. Mitchell): Did he tell you what he said he wanted?

A. He said he wanted 7 days.

Q. Without bidding?

A. He said he wanted first run in the city of Los Angeles, that is what he first said, and I wouldn't give it to him.

Then he wanted to run day and date with Inglewood, and I said, "Well, all right, if you want to run day and date with Inglewood, you are in the same area. I will let you bid the same as they bid in Inglewood."

That's the conversation as I remember.

Mr. Mitchell: All right. Returning to this letter which was just identified and which has been admitted in evidence as defendant Loew's Exhibit D-3, I would like to read it [540] now, your Honor.

The Court: All right.

Mr. Mitchell: This is on the letterhead of Metro-Goldwyn-Mayer, office of George A. Hickey, dated August 31, 1950, to Mr. Marco Wolff, Fanchon & Marco, Inc., 6838 Hollywood Boulevard, Los Angeles 28, California.

(Testimony of George A. Hickey.)

“Dear Marco:

“Confirming our conversation in my office yesterday, we shall be glad to grant you, if you so desire, the opportunity of bidding competitively for exhibition of our product between your Paradise Theatre and the first run theatres in Inglewood, California, for an availability of 7 days after Los Angeles first run closing.

“We shall await word from you before proceeding further in the matter.

“Kindest regards,

“Sincerely,

“George A. Hickey.”

Mr. Corinblit: May we have the date on that again, counsel?

Mr. Mitchell: That is August 31, 1950.

Mr. Corinblit: Thank you.

Q. (By Mr. Mitchell): Now, commencing in September, 1950—this was after the opening of the Paradise, right? [541] A. Yes.

Q. On the picture *Life of Her Own*, to whom were requests for bids sent?

A. They were sent to the Paradise, La Tijera, United Artists, Fox, Fifth Avenue, and Academy.

Q. And which theatres put in bids?

A. The Paradise, La Tijera, United Artists, and Academy. [542]

Q. And which theatre won the bid?

A. The Academy.

Mr. Corinblit: Just a minute, counsel. I take the question is taken from the document to which

(Testimony of George A. Hickey.)

theatre was the picture awarded. Is that the question? Your question was to which theatre the picture was awarded, is that right?

Mr. Mitchell: Yes. I said: "Which theatre won the bid" is what I think I said, but they both mean the same thing. And he said, "Academy."

Mr. Corinblit: All right.

Q. (By Mr. Mitchell): That picture is Life of Her Own? A. That is right.

Q. All right. Now, I have here a record of Loew's Incorporated. Do you recognize this record? A. I do.

Q. What is it? A. That is the bid——

Q. Bid summary? A. Bid summary, yes.

Q. Can you tell me from this record what the Academy bid?

A. Yes. The Academy bid \$4,025 guarantee, plus 70 per cent in excess of \$10,500, less cost of second feature.

Q. What did the Paradise bid? [543]

A. The Paradise bid 14 days, 40 per cent of the gross, less cost of second feature.

Q. Well, the Academy bid 14 days, too?

A. 14 days.

Q. And that means they will play the picture 14 days? A. Yes.

Q. Which is the best bid?

A. Oh, the Academy, of course.

Q. All right. Now, the next picture is Toast of New Orleans. To whom were requests for bids sent?

(Testimony of George A. Hickey.)

A. The Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Who put in bids?

A. United Artists and Fifth Avenue.

Q. Who won the bid? A. United Artists.

Q. All right. The next picture is Right Cross.
To whom were requests for offers sent?

A. Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Who put in bids?

A. United Artists and Fox.

Q. And who won the bid? A. Fox.

Q. The next picture is Devil's Doorway. [544]

A. Paradise,——

Q. These are the ones to whom requests for bids were sent? A. That is right.

Q. All right.

A. Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which theatres submitted offers?

A. United Artists and the Fox.

Q. Which theatre won the bid?

A. United Artists.

Q. The next picture is Next Voice You Hear.
To which theatres were requests for offers sent?

A. Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which theatres put in bids?

A. Paradise, United Artists and Fifth Avenue.

Q. Which theatre won the bid?

A. Fifth Avenue.

Q. What did the Fifth Avenue bid?

(Testimony of George A. Hickey.)

A. The Fifth Avenue——

Q. By reference to the bid records.

A. The Fifth Avenue bid 7 to 14 days. That means they could take it off in 7 days, \$1050 guarantee for the run against first week 35 per cent to \$3000, 66 $\frac{2}{3}$ over, [545] less cost of second feature and give aways.

Playing time in excess of 7 days percentage sliding scale see attached, less cost of second feature and give aways.

Run will be continued 14 days so long as daily gross equals or exceeds 300 per tenth.

Q. Now, from the Fifth Avenue you got a guarantee and what does this mean, 35 per cent to \$3000?

A. Well, it means that you get 35 per cent up to \$3000 and then if you go over that you get 66 $\frac{2}{3}$ over.

Q. All right. Now, what did the Paradise bid?

A. The Paradise bid 7 days, 35 per cent less the cost of the second feature.

Q. What is the better bid?

A. Why, this here, of course.

Q. You are pointing to——

A. Fifth Avenue.

The Court: Now, may I interrupt for just a moment.

You used a new term. I think you should tell the jury what you mean. What do you mean by "give away?"

The Witness: Well, you see a theatre, some of them give away dishes.

(Testimony of George A. Hickey.)

The Court: Automobiles.

The Witness: And some of them give away automobiles, yes.

And they take the cost of that automobile or those [546] dishes and they add it to their expenses.

Now, if there is an automobile given away, they divide that into about 25 or 30 theatres, and so much would be allotted to each theatre to make up the \$3000 or \$4000 or whatever they paid for it.

If this theatre was charged up with \$300, why, they would put that in and if another theatre was capable of doing a lot more business, why, they might make him take \$800. And another one \$100 and another one \$125 and another one \$150 and so on until they made up the whole \$4000 or \$3000 or whatever it might be.

And that is what they mean by "give aways."

The Court: The cost of the give away is added to the expense of running the theatre?

The Witness: That is right.

Q. (By Mr. Mitchell): The expense of running the theatre has something to do with this sliding scale?

A. Oh, yes. Most exhibitors—they put a profit in their sliding scale and that is the reason we don't like some of those sliding scales, and that is the reason we have so much trouble with exhibitors, because when we play on a sliding scale, the sliding scale generally starts at 25 per cent and the exhibitor will tell you that his break-even figure is 25 per cent, but it is not the break-even figure. They

(Testimony of George A. Hickey.)

have got a profit in there. They have got a profit and [547] we have got nothing, see.

The Court: Then it is a contest, is it, between the distributor and the exhibitor?

The Witness: That is correct, sir.

Q. (By Mr. Mitchell): All right. The next picture after the Next Voice You Hear is the picture called Miniver Story.

A. Well, the ones that bid on that was the Paradise, La Tijera——

Q. I want the ones to whom requests for bids were sent.

A. That is what I meant, I am sorry. Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which ones bid?

A. The Paradise bid, the La Tijera and United Artists and the Fox.

Q. Which one won the bid?

A. La Tijera got the bid.

Mr. Westbrook: There are two on one sheet there.

Mr. Mitchell: Oh, yes, I see. All right.

Q. Now, the La Tijera bid what?

A. Well, the La Tijera bid 7 days, 40 per cent for the first five-tenths, 35 per cent for the second five-tenths, less cost of second feature.

"Will hold over as long as gross equals or exceeds 300 per tenth." [548]

Q. Now, these tenths are what? Somebody explained here that it was the weekend or the entire

(Testimony of George A. Hickey.)

week being divided into ten parts? A. Yes.

Q. With most of the tenth accounted for by Saturday and Sunday. A. That is correct.

Q. Now, that is 40 per cent of the first five-tenths and 35 per cent of the second five-tenths?

A. Yes. Let me explain to you what "tenths" mean. I think it is important.

Q. All right.

A. Monday, Tuesday, Wednesday and Thursday is one-tenth of the week.

The Court: Each day is one-tenth?

The Witness: Each day—Monday, Tuesday, Wednesday, Thursday and Friday, one-tenth. Saturday is two and Sunday is three. That makes up the ten tenths.

Q. (By Mr. Mitchell): All right. On the Mini-ver Story the La Tijera wins the bid with 40 per cent for the first five-tenths, 35 per cent for the second. What did the Paradise bid?

A. The Paradise bid 7 days, 35 per cent less cost of second feature.

Q. Which is the better bid? [549]

A. Why, the La Tijera.

The Court: Now, Mr. Hickey, these bids say "less cost of second feature."

As a general rule, the second feature is sold upon a flat basis, \$25, \$50 or \$100?

The Witness: That is correct.

The Court: As a general rule.

The Witness: And in some of these we found—in some of these we found, some of these where

(Testimony of George A. Hickey.)

the exhibitor—when we sell a picture flat, some of the exhibitors will take a figure—we will take a figure and say “We will sell it at \$500”, and they say, “That is more than we ever paid for anything,” but when we get one of these things, where they say “Less cost of second feature,” they take, oh, \$300 and say, “I had to pay \$800 for that.”

Q. (By Mr. Mitchell): It is a hard life, Mr. Hickey. All right. The next picture is *To Please The Lady*. From whom were bids requested?

A. The bids were requested from the Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Who put in bids?

A. Paradise, La Tijera, United Artists and Fifth Avenue.

Q. Who won the bid? A. Fifth Avenue.

Q. I have trouble with these things.

A. We have trouble with them all the time.

Q. All right. Fifth Avenue wins the bid on *To Please The Lady*. What kind of bid?

A. Well, they bid 21 days including Thanksgiving Day, \$3825 guarantee plus 70 per cent in excess of \$9,500, less cost of second feature and give away.

Q. What did the Paradise bid?

A. The Paradise bid 7 days less cost of second feature.

Q. Which was the better bid?

A. Why, the Fifth Avenue, of course. Thanksgiving Day is as good as any three days.

(Testimony of George A. Hickey.)

Q. All right. The next picture is King Solomon's Mines. To whom were requests for bids sent?

A. The Paradise, the Academy, La Tijera, United Artists, Fifth Avenue and Fox.

Q. And which theatres made bids?

A. Paradise, La Tijera, United Artists and Fifth Avenue and the Fifth Avenue got the picture.

Q. All right. Now, on King Solomon's Mines, what did the Fifth Avenue bid?

A. Well, the Fifth Avenue bid 14 to 21 days if available on or before Christmas Day. Playing time, including Christmas Day, New Year's Even and New Year's Day, \$5100 guarantee against 50 per cent to \$12,000, and 75 per cent [551] thereafter, less cost of second feature and give aways.

Q. All right. What did the Paradise bid?

A. The Paradise bid 14 days, 50 per cent of the gross less cost of second feature and if—or——

Q. If any.

A. Or Gone With The Wind. Terms of 70 per cent for two weeks.

Q. With a guarantee?

A. With a guarantee that the theatre receive ten per cent of the gross as profit.

I wish somebody would give me a profit.

Q. Which is the better bid?

Mr. Corinblit: May I have the last statement, please?

(Statement read as follows: "I wish somebody would give me a profit.")

(Testimony of George A. Hickey.)

Q. (By Mr. Mitchell): Which is the better bid, the Paradise or the Fifth Avenue?

A. Why, the Fifth Avenue.

Mr. Corinblit: As I understand it, the Paradise bid was 70 per cent of the gross?

Mr. Mitchell: That isn't quite what the Paradise bid was. He wants you to read him the Paradise bid again.

The Witness: 14 days, 50 per cent of the gross less cost of second feature, if any, or *Gone With The Wind*, terms 70 per cent for two weeks. [552]

The Court: What do you mean?

Q. (By Mr. Mitchell): With a guarantee that the theatre receives ten per cent of the gross as profit.

A. Now, that makes it a bad bid.

The Court: What do you mean by *Gone With The Wind*? How did *Gone With The Wind* get into this picture?

The Witness: Well, you see we sold *Gone With The Wind*, your Honor, on 70 per cent of the gross and guaranteed the exhibitor that he would receive ten per cent of the gross as profit. In other words, we guarantee him a profit because we knew that that picture was a terrific picture and would give him a profit, so we guaranteed it.

Q. (By Mr. Mitchell): What does that do to the bid here on *King Solomon's Mines*? Do you think guarantee of ten per cent is a good bet for the distributor?

A. I do not know—for the distributor?

(Testimony of George A. Hickey.)

Q. Yes.

A. No, I wouldn't say so.

Q. Without the guarantee the Paradise was willing to bid what per cent?

A. 50 per cent, 14 days, 50 per cent of the gross less cost of second feature.

Q. And without any guarantee the Fifth Avenue gives you a guarantee of how many dollars?

A. \$5100. [553]

Q. And then what kind of percentage?

A. 50 per cent to \$12,000 and 75 per cent thereafter, which makes it a much better bid. We are sure of \$5100.

Q. All right. The next picture is Dial 1119. To whom were requests for bids sent?

A. Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy. [554]

Q. And who sent in bids?

A. United Artists and Fox.

Q. Who won the bid? A. Fox.

Q. The next picture is Two Weeks With Love. To whom were requests first sent?

A. Paradise, La Tijera, United Artists, Fox, Fifth Avenue, and Academy.

Q. Who sent in bids?

A. Paradise and the United Artists.

Q. Who won the bid? A. United Artists.

Q. All right. What did the United Artists bid for Two Weeks With Love?

A. The United Artists bid \$2,750 guarantee for

(Testimony of George A. Hickey.)

14 days, the first week 50 per cent to \$5,050, and 65 per cent less cost of second feature.

Q. It is then 65 per cent?

A. Then 65 per cent less cost of second feature.

Second week 35 per cent to \$4,250, then 65 per cent less cost of second feature.

The Paradise bid 14 days, first week 40 per cent, second week 30 per cent, less cost of second feature, and the letter stated when he sent in his bid that he wanted clearance over the La Tijera Theatre.

Q. All right. Which was the best of those two bids? A. Oh, the United Artists, of course.

Q. Now, that bid request was sent out December 11, 1950, is that correct? A. That's right.

The Court: It appears from your exhibit that after that date no other requests for bids were sent to the Paradise.

Mr. Mitchell: That is what we are coming to, that's right.

The Court: All right.

Q. (By Mr. Mitchell): Do you recall having a conversation with Mr. Schreiber in the neighborhood of December, 1950 with respect to what availability he wanted? A. Yes.

Q. I will show you a memorandum which is marked Defendant Loew's Exhibit E-3——

Mr. Mitchell: I don't know whether you have seen these. Well, I know you have seen them at some time.

Mr. Corinblit: I would like to see them if you are using them.

(Testimony of George A. Hickey.)

Mr. Westbrook: I can provide him with copies.

Mr. Mitchell: All right.

Q. (By Mr. Mitchell): —which is a memorandum from Mr. Aspell to Mr. Ed Urschel, which is directed also to your [556] attention, and ask you whether that helps you fix the date of this conversation with Mr. Schreiber.

Mr. Corinblit: Your Honor, just for the sake of procedure, could we have the question first as to what the date was, and then the question of refreshing recollection, because there isn't a thing in this document which refers to the date.

Mr. Mitchell: The document is dated.

Mr. Corinblit: There is no question whether or not Mr. Hickey remembers the date. I think what is happening is Mr. Hickey is reading the document and working it into the dates.

The Court: He has a right to read the document to refresh his memory.

Mr. Corinblit: He had not stated prior thereto, your Honor, that he didn't have a memory on the subject.

The Court: Do you remember the question?

Q. (By Mr. Mitchell): I want to know the date when you talked to Mr. Schreiber about it.

A. Well, it was around that date. I don't remember the exact date.

Q. I know, but you can tell from the memorandum about when it was. The memorandum is dated December 12, 1950. Now, can you fix this con-

(Testimony of George A. Hickey.)

versation with Mr. Schreiber with relation to the memorandum? [557]

A. Well, it must have been around that date. It must have been around the 20th or the 18th or 19th.

Q. All right. In substance, what did Mr. Schreiber say to you in this conversation?

A. Well, he didn't want to bid any longer. He wanted to get a clearance that would be satisfactory to him. So we gave him 21 days, and he seemed satisfied.

Q. Does this memorandum which I have just shown you, Defendants' Exhibit, Loew's E-3, have anything to do with this conversation with Mr. Schreiber?

A. Yes. I discussed it—after Mr. Schreiber discussed it with me, I discussed it with my manager and so we gave him that clearance and he was satisfied with it.

Q. He went ahead and played pictures on that clearance? A. That's right.

Q. 21 days after Los Angeles?

A. That's right, and he seemed satisfied.

Mr. Mitchell: I will offer Defendants' Exhibit E-3.

Mr. Corinblit: I will object to the offer in evidence. It is a memorandum between two third parties.

The Court: That may be perfectly true, but under the rules it is admissible, is it not?

Mr. Mitchell: It is sent to Hickey's attention, among others.

(Testimony of George A. Hickey.)

The Court: Was this memorandum made at about that [558] date, 12/20/50?

The Witness: Yes.

The Court: Was it kept in the files of Metro-Goldwyn-Mayer?

The Witness: Yes.

The Court: Was it customary to make memorandums like this?

The Witness: Oh, yes. We always made memorandums of exhibitors that come in when we were having a discussion or dispute about anything. Not only that but when some of them come in my office, the minute they leave I call my secretary and I have her write down everything that was said and I put it away.

Mr. Corinblit: Your Honor, this is the problem. It is true there is a rule of law which permits records in the ordinary course of business to be admitted under the business records rule, depending upon the party offering, but you do not have the ordinary rule providing that self-serving statements may be offered by a party.

The Court: I disagree with you. All you have to do is show it is kept in the ordinary course of business and made at the time of the transaction and it is admissible.

Mr. Corinblit: Your Honor, that would permit a large organization to create its own records.

The Court: That may be perfectly true, but it has [559] been admissible time after time.

Mr. Corinblit: We will object to it on that ground, your Honor.

(Testimony of George A. Hickey.)

The Court: Overruled. But may I ask a question? Who is T. J. Aspell, Jr.?

The Witness: He is my manager there in the office.

The Court: It may be received in evidence.

The Clerk: Loew's Exhibit E-3.

(The exhibit referred to was received in evidence and marked as Defendant's Loew's Exhibit E-3.)

The Court: Do you want to read it to the jury?

Mr. Mitchell: Yes. I am going into another document, so may I read it from here?

The Court: Yes. [560]

* * * * *

Q. (By Mr. Mitchell): After these December discussions or this discussion between you and Mr. Schreiber, did you then serve him on a 21-day availability? A. I did.

Q. Serve Mr. Schreiber? A. I did.

Q. The Paradise Theatre? A. Yes.

Q. Did you send him bids for the 7 day availability? A. I did.

Q. Maybe you'd better look. Let's take Pagan Love Song where you sent out bids on December 20, 1950. To what theatres did you send requests for bids?

A. We sent the La Tijera, the United Artists, the Fox, Fifth Avenue, the Academy. We didn't send him.

Q. What theatres bid? A. Fifth Avenue.

Q. Only? A. Only Fifth Avenue.

Q. And to whom did you award the bid?

(Testimony of George A. Hickey.)

A. To Fifth Avenue.

Q. The next picture on January 2, 1951, was Mrs. O'Malley and Mr. Malone. To what theatres did you send requests or offers on that picture?

A. La Tijera, United Artists, the Fox, Fifth Avenue and Academy.

Q. What theatres sent in bids?

A. La Tijera, United Artists and Academy, and La Tijera got it.

Q. The next picture, Grounds For Divorce, on which requests for bids were sent out January 6, 1951, to which theatres did you send requests for offers?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. And which submitted offers?

A. La Tijera, United Artists and Fifth Avenue.

Q. Which theatre won the bid?

A. La Tijera.

Q. The next picture on which requests for bids were sent out on the same day, Watch the Birdie, which theatres were requests sent?

A. La Tijera, United Artists, Fox, Fifth Avenue and [563] Academy.

Q. Which theatres bid?

A. La Tijera, United Artists and Academy, and La Tijera got it.

Q. The next picture, January 19, 1951, request for bids were sent out for Kim, and to whom were requests sent?

A. La Tijera and United Artists, Fox, Fifth Avenue and Academy.

(Testimony of George A. Hickey.)

Q. Which theatres made offers?

A. La Tijera, the United Artists and the Fifth Avenue.

Q. And which theatre won the bid?

A. United Artists.

Q. The next picture was Magnificent Yankee, for which requests for bids were sent out on January 25, 1951, to which theatres?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which theatre won the bid?

A. The Academy——

Q. Excuse me. Which theatres made a bid?

A. The Academy.

Q. And did you award it to the Academy?

A. No. We negotiated a deal and we awarded it to the United Artists.

Q. That is, you rejected the Academy bid? [564]

A. We rejected all the bids and renegotiated, the same as we do in lots of situations. [565]

Q. The next picture Cause For Alarm. Requests were sent out on February 6, 1951. To which theatres requests sent?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which theatres made bids?

A. Fifth Avenue and Fifth Avenue got it.

Q. The next picture Three Guys Named Mike, February 20, 1951. To which theatres were requests for offers sent?

(Testimony of George A. Hickey.)

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. And which theatre submitted an offer?

A. United Artists and United Artists got it.

Q. The next picture Vengeance Valley, February 20, 1951. To which theatres did you send requests for offers?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which theatres made offers?

A. United Artists and Fifth Avenue.

Q. Which theatre got the bid?

A. Fifth Avenue.

Q. The next picture is Royal Wedding, March 10, 1951. Which theatres did you request offers from?

A. La Tijera, Fox, Fifth Avenue and Academy.

Mr. Westbrook: Mr. Hickey, will you speak up a little [566] bit. I think his voice is dropping.

The Witness: I am getting a little hoarse.

Q. (By Mr. Mitchell): Which theatre made offers? A. United Artists and the Fox.

Q. Which theatre got the bid?

A. United Artists.

Q. All right. The next one is Inside Straight, March 10, 1951.

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which ones made offers?

A. United Artists and Academy.

(Testimony of George A. Hickey.)

Q. Which one got the bid?

A. United Artists.

Q. The next one is Father's Little Dividend. The same theatres you sent offers to?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. And the ones who submitted offers?

A. United Artists and Fifth Avenue and the United Artists got it.

Q. The next one is—well, before we come to the next one let me show you a letter, defendant Loew's Exhibit G-5, a letter from Syd Lehman to Thomas J. Aspell, Jr.

Have you seen this letter before? [567]

A. Yes.

Q. Was it called to your attention at the time?

A. Yes, sir.

Q. Who is Syd Lehman?

A. He is the buyer for the Paradise.

Q. After Marco ceased being the buyer?

A. That is correct.

Mr. Mitchell: I will offer this letter in evidence, you Honor.

Mr. Corinblit: Your Honor, I have the same objection. It is outside the scope of the direct examination. May I have a continuing objection to this sort of evidence?

The Court: Yes, the same objection and the same ruling. It will be admitted in evidence.

Mr. Mitchell: May I read the letter in evidence?

(Testimony of George A. Hickey.)

The Clerk: Will you let me mark it, please?

Loew's Exhibit G-5 in evidence.

(The document referred to was marked Defendant's Loew's Exhibit G-5 and received in evidence.)

Mr. Mitchell: Before I read it, Mr. Hickey, I will show you a letter dated April 9, 1951, apparently in reply to this letter. It is from Mr. Aspell to Mr. Lehman and I will ask you if you have seen that letter before. A. Yes.

Q. And that was sent by Loew's or by Aspell?

A. Aspell, yes.

Q. Did he discuss it first with you?

A. They have to discuss everything like that with me.

Mr. Mitchell: I will offer in evidence this letter which is marked Defendant Loew's Exhibit G-12.

Mr. Corinblit: Same objection.

The Court: Same objection, same ruling, and received in evidence.

(The document referred to was marked Defendant Loew's Exhibit G-12 and received in evidence) [569]

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Q. (By Mr. Mitchell): Did you ever have any requests thereafter from Mr. Lehman or from the Paradise Theatre for the right to a 7-day run [571] on bid? A. No, I don't think we did.

Q. He speaks of Born Yesterday. That picture is a picture of what company?

(Testimony of George A. Hickey.)

A. Born Yesterday?

Q. Do you remember that?

A. Might be one of ours. We had a lot of them.

Q. Do you remember that being a Columbia picture with Judy Holliday?

A. I don't remember.

Q. Or don't you ever see any pictures?

A. I don't remember those pictures.

Q. All right. I think we left off, then, in March.

The next picture that you offered was Painted Hills. You offered it to whom?

A. We offered it to the La Tijera, United Artists, Fox, Fifth Avenue and the Academy.

Q. Did you get any bids? A. No.

Q. Get any play? A. I don't think so.

Q. Was that one of your good pictures?

A. That was one of those problems we had.

Q. All right. The next one was on April 12, 1951, Soldiers Three. From whom did you ask offers?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. From whom did you get any bids?

A. United Artists.

Q. And you awarded it to United Artists?

A. That is correct.

Q. Now, before we go to the next one I will show you a letter dated May 4, 1951, from Mr. Lehman to Mr. Aspell. Have you seen that before?

A. Yes, I have seen that letter before.

Q. And the reply dated May 18, 1951?

(Testimony of George A. Hickey.)

A. Yes, I have seen that.

Q. Mr. Lehman's letter was received and Mr. Aspell's letter was sent at that time?

A. That is right.

Mr. Mitchell: I will offer in evidence Mr. Lehman's letter of May 4, 1951, which is marked Defendant Loew's Exhibit G-16.

Mr. Corinblit: Same objection.

The Court: Same ruling.

The Clerk: Loew's Exhibit G-16 in evidence.

(The document referred to was marked Defendant Loew's Exhibit G-16 and received in evidence.) [573]

Mr. Mitchell: I will offer in evidence Mr. Aspell's reply dated May 18, 1951, which is marked Loew's Exhibit G-20.

Mr. Corinblit: Same objection.

The Court: Same ruling.

The Clerk: Loew's Exhibit G-20.

(The exhibit referred to was received in evidence and marked as Defendant Loew's Exhibit G-20.) [574]

* * * * *

Q. (By Mr. Mitchell): Did Mr. Schreiber then request the right to the 7 day run on a bid?

A. Yes. He asked me for a 7 day run, but he didn't want to bid.

Q. He was not willing to bid?

A. He was not willing to bid.

Q. Did he ask you to send him bid offers?

(Testimony of George A. Hickey.)

A. No.

Q. All right. Then the next picture on May 8, 1951, Go For Broke, to which theatres did you send requests for offers?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. And which theatres put in bids? [576]

A. United Artists and the Fifth Avenue. The United Artists got the picture.

Q. The next is Home Town Story. You sent requests for bids to those same theatres which you named before?

A. Yes, La Tijera——

Q. We will save your voice, Mr. Hickey.

A. All right.

Q. Did you get any bids? A. None.

Q. What did you do with the picture?

A. We negotiated a deal in the Fifth Avenue.

Q. The next picture is The Great Caruso. You sent out offers to bids to those same theatres?

A. Yes.

Q. Which ones bid?

A. La Tijera, United Artists and Fifth Avenue.

Q. Which one won the bid?

A. United Artists.

Q. The next picture, No Questions Asked, you sent our requests to bids to the same theatres?

A. Same theatres?

Q. Which theatres bid? A. United Artists.

Q. Did you award it to United Artists?

A. No. We didn't like the bid, so we turned it

(Testimony of George A. Hickey.)

down, [577] and we negotiated a deal with the La Tijera.

Q. That is Bill Kupper's theatre?

A. Yes.

Q. The next one is Excuse My Dust. You sent out requests for offers to the same theatres?

A. Yes.

Q. Which one made offers?

A. United Artists and Fifth Avenue.

Q. Which one got the bid?

A. United Artists.

Q. The next picture is Showboat. We are now at June 28, 1951. You sent requests for offers to the same theatres? A. Same theatres.

Q. Had Mr. Schreiber by that time requested the right to bid in the Inglewood area?

A. No.

Q. Which theatres made bids?

A. United Artists and Fifth Avenue.

Q. Which theatre got the bid?

A. Fifth Avenue.

Q. The next picture was Theresa on June 28, 1951, for which you sent requests for offers to the same theatres? A. Yes.

Q. Which theatres bid?

A. United Artists and Fifth Avenue. [578]

Q. Which one won the bid?

A. Fifth Avenue.

Q. The last picture on this schedule, on June 2, 1951, request for offers were sent to the same thea-

(Testimony of George A. Hickey.)

tres? A. Same theatres.

Q. Which theatres bid?

A. United Artists and Academy.

Q. Which one won the bid?

A. United Artists.

Q. I would like to go back to the subject matter of first run Los Angeles for a minute, not Inglewood, but first run Los Angeles. You have told me that Mr. Schreiber requested the right to play first run Los Angeles day and date with the showcase theatres, do you recall that? A. That is true.

Q. Did any other suburban theatres ask you for this right?

A. Yes. We had requests of that type from the Picwood Theatre, we had the Meralta Theatre in Culver City, and the Southside Theatre.

Q. Just a minute. The Picwood is in Westwood?

A. The Picwood is in Westwood, yes.

Q. And the Meralta in Culver City?

A. Culver City.

Q. You mentioned the Southside, over here [579] just outside of Inglewood (indicating).

A. Yes.

Q. Can you remember any others?

A. Yes. We had—let me think a minute. We had other requests.

Q. To save time, let me refresh your recollection. How about the La Tijera?

A. The La Tijera, they also asked, when they built that theatre, for first run, too.

(Testimony of George A. Hickey.)

Q. First run Los Angeles?

A. Yes, day and date with Loew's State and Hollywood.

Q. How about the Baldwin Theatre, Fanchon & Marco's theatre?

A. The Baldwin Theatre asked me two or three times for the same run.

Q. What about the Rio?

A. I don't remember whether the Rio did or not. I know the Baldwin did.

Q. How about Bard's Adams?

A. Bard's Adams asked me, yes.

Q. How about Manchester?

A. Manchester asked me.

Q. That is another theatre of Marco?

A. Marco, yes. He asked me for both the Southside and the Manchester. [580]

Q. How about the Crown over in Pasadena?

A. The Crown asked me, yes, the Crown in Pasadena.

Q. What was your reply to these requests?

A. The same reply that I made to the Paradise, that we didn't have any 7 day runs, and my answer was the same to all of them in the city of Los Angeles for the same reason, which I could repeat if I want to go all over it again.

Q. No. You have told us why you refused it to the Paradise. It was the same reason?

A. The same reason.

Q. You would not play these suburban theatres

(Testimony of George A. Hickey.)

day and date with the downtown and Hollywood theatres?

A. That is true. We wanted to get, to have a show case in the city, and we wanted one in Hollywood, and we wanted one downtown, and we wanted one downtown, and we wanted to properly advertise our pictures.

You know, when you advertise your pictures, such as we do, in the city of Los Angeles and in all the magazines in the country, we spend—for instance, we will take an inside page, a colored page in the Saturday Evening Post. One issue cost us \$18,000.

We will take an ad in five papers in Los Angeles that cost us \$50 an inch.

Well, now, you know, you try to get space such as we do on television, and it costs us to advertise a picture a week on television \$15,000. It all depends on where you get [581] your minute or your minute and a half on television. If you get it at 8:00 o'clock at night right ahead of a news broadcast, it will cost you more, and if you don't get it in the good spots, it is no good to you.

When you spend \$15,000 on television, then you spend another \$10,000 in the newspapers, and then you spend another \$10,000 to \$12,000 having a premiere, such as we do on our big pictures and you can't afford to let a lot of houses run on first run with that kind of advertising and that kind of money being spent. [582]

(Testimony of George A. Hickey.)

It is nothing for us to spend a half million dollars in the magazines in this country. Well, now, they go in to all these homes. To say nothing of what we spend here. It is nothing to spend \$1,000,000 on a picture in advertising and we have got to get that money back. We can't let the exhibitors hurt us on that. We can't do it. It is impossible. We wouldn't be in business if we did it.

Q. You try to sell the pictures the way in your best judgment they should be sold?

A. That is correct.

Q. In discussing selling pictures in Los Angeles in 1950 and 1951, when the Paradise Theatre was opened, were you engaged in any combination, conspiracy, or did you have any deal or understanding or agreement with any of the other distributors?

A. We have no agreements with anybody because we have trouble enough taking care of our own business.

Q. Did you have any deal, understanding, combination, conspiracy or agreement other than your film licensing agreements, with any exhibitor such as Fox West Coast or United Artists Theatres Circuit or any other exhibitors? A. No.

Mr. Mitchell: That is all, your Honor.

Mr. Johnston: I have no questions, your Honor.

Redirect Examination

Q. (By Mr. Corinblit): Mr. Hickey, I think you stated about four times in the examination by Mr. Mitchell—— A. I can't hear you.

(Testimony of George A. Hickey.)

Q. I am sorry. I think you stated about four times in the examination by Mr. Mitchell, a number of reasons why Loew's Incorporated, why you took the position that you would refuse to let the Paradise Theatre, or for that matter any other independent theatre, have Loew's pictures on a first run basis. And I think you said one of the reasons was that you have to advertise your products properly. Is that right?

A. I said that we had to have two showcases in order to advertise them properly and make them worthwhile for the others exhibitors that run afterwards and that is the truth.

Q. And when you said that you had to have them, what you meant was that from an economic point—you were telling the jury that it was your position in fact that economically that was required as far as Loew's was concerned, is that it?

A. That was what?

Q. You were telling the jury when you said that you had to have only two theatres, that economically, as a matter of business decision, Loew's had to operate that way. Is that what you were saying to the jury? [584]

A. In our opinion that is the proper way to handle our business.

Q. And I think you also said that—I will withdraw that question.

Now, it is true—it is true that prior to 1950, prior to 1950 as you have testified before, the only

(Testimony of George A. Hickey.)

theatres that you would permit to play your pictures were Fox theatres. Now, we have gone through that. A. I did not say that.

Mr. Mitchell: That has been asked and answered more than four times.

The Witness: I did not say that.

The Court: Just a minute. If there is an objection, you shouldn't speak until after the objection has been heard.

What is the objection?

Mr. Mitchell: My objection was that the question has been asked and answered at least four times heretofore and it is not proper re-cross either. I didn't ask him anything about any period prior to 1950. I tried to stay within the issues in the complaint.

The Court: I think that has been gone into before.

Mr. Corinblit: I want to say from the standpoint of expanding the scope of the examination of this witness, I pointed out Mr. Mitchell has gone into a great number of matters which I don't believe I touched on at all. That is [585] why I wanted to lay the foundation here again. I will withdraw the question if your Honor feels it is not proper.

Mr. Mitchell: May we see what you are going to show the witness?

Mr. Corinblit: Yes, certainly. These are newspaper ads, counsel.

(Testimony of George A. Hickey.)

Mr. Mitchell: I am not blind. I am getting old but not blind.

Q. (By Mr. Corinblit: I want to show you——

Mr. Massey: Have those been marked, counsel?

Mr. Corinblit: No.

The Court: Better have them marked.

Mr. Corinblit: We will mark them Plaintiff's Exhibit next in order for identification.

The Clerk: 50 for identification.

(The exhibit referred to was marked Plaintiff's Exhibit 50 for identification.)

Q. (By Mr. Corinblit): Newspaper ads in the Times dated November 23, 1955.

The Court: 1955?

Mr. Corinblit: Yes.

Q. Mr. Hickey, I will show you——

Mr. Mitchell: Before we get into that and anything is read to the jury, your Honor, on the date proposition, I want to have an objection before he does that. [586]

The Court: All right.

Q. (By Mr. Corinblit): Mr. Hickey, I want to show you Plaintiff's Exhibit 50 for identification, and I have here a year's full of newspaper ads for the years 1955 and 1956, which I will be glad to show to you as well, and ask you to examine this and tell me in the light of what you see, whether or not it doesn't refresh your recollection that in fact there was no reason in 1950 or 1951 why you should refuse to license the Paradise on an equal

(Testimony of George A. Hickey.)

availability with the downtown theatres. Does that refresh your recollection in any way?

A. I don't understand what you mean.

Q. Well, you testified that as far as Loew's was concerned that is was required, it was necessary for Loew's to play in two theatres—the Loew's State and the Egyptian for the most part, and to refuse the Paradise the right to play on an equal availability—that it was necessary.

Now, I ask you in examining Plaintiff's Exhibit 50, and I will be glad to show the last year's newspaper reports, does that refresh your recollection that in fact you knew in 1950 that it was unnecessary to refuse the Paradise day and date with downtown and with the Loew's State and with the Egyptian?

A. No, I didn't know any such a thing.

You are talking about a multiple run. I [587] don't know what you are talking about.

Q. Well, what do you know about multiple runs—that is, what do you know about the policy of playing——

A. What question are you asking me?

Q. I asked you, Mr. Hickey, whether or not, looking at this newspaper ad and looking, if you want to, at the last year's ads, whether that refreshes your recollection that in fact in 1950 and 1951 there was no reason for Loew's refusing the Paradise Theatre to play day and date first run except that you were in collusion with the other exhibitors in the area?

(Testimony of George A. Hickey.)

A. I beg your pardon, we were not in collusion with anybody.

Q. This does not refresh your recollection in that regard?

A. Yes, sir,—I don't know what answer—I don't know what you want to find out.

The Court: I don't know how you can ask the witness if it refreshes his recollection.

Now, if you want to, you can establish the fact that some time after 1951 Loew's changed its policy and had a multiple first run in Los Angeles and you can argue to the jury if you want to that that is some evidence that it wasn't necessary in 1951.

Mr. Corinblit: Very well, your Honor. [588]

The Court: I don't know how it refreshes the witness' memory.

Mr. Mitchell: I think the witness should be permitted to explain why Loew's changed its policy.

The Court: There is no question before the court. The only question was "Does it refresh your memory?"

Mr. Corinblit: All right.

Q. Now, Mr. Hickey, the fact is, is it not, and you know this, that this last year's group of newspaper ads would show that Loew's Incorporated pictures in the city of Los Angeles are playing in at least nine or ten theatres in this Los Angeles area, isn't that correct? A. That is correct.

The Court: Now, wait a minute. You mean day and date with Los Angeles downtown?

(Testimony of George A. Hickey.)

Mr. Corinblit: Yes, day and date with Los Angeles.

The Court: Then say so.

Mr. Mitchell: Can he explain why, your Honor?

The Court: At the proper time he can explain why.

Mr. Corinblit: Thank you, your Honor.

Q. Now, among the theatres that under Loew's policy are playing day and date——

The Court: Now?

Mr. Corinblit: Now. Are included the United Artists in Pasadena, correct? [589]

The Witness: I believe so.

Q. (By Mr. Corinblit): Are included the United Artists in Inglewood, correct?

A. I am not so sure about that.

Q. You are not sure about that?

A. No.

Q. All right.

A. It may. I am not sure about it, though.

Q. Are included the Pantages Theatre in Hollywood, is that right? A. Sometimes.

Q. That is the theatre that you said was not such a good showcase theatre?

A. That is right. [590]

Q. And including the RKO Hillstreet Theatre downtown, isn't that right?

A. The RKO Hillstreet? Once in a while, not very often.

(Testimony of George A. Hickey.)

Q. All right. Including the Village Theatre in—— A. In Westwood.

Q. ——in Westwood. That is correct, isn't it?

A. That is correct.

Q. Including the Fifth Avenue Theatre in Inglewood, is that correct? A. That's right, yes.

Q. Including the Studio City here (indicating), is that right? A. Studio City?

Q. Studio City Theatre.

A. Yes, that's right.

Q. Including the United Artists Theatre in East Los Angeles, isn't that correct?

A. That's right.

Q. That is in this area. I think we mentioned United Artists in Pasadena, in this area (indicating).

And including the Cornell Theatre in Burbank, isn't that right?

A. Not every often, but we do play it.

Q. Including the Picwood Theatre out here, isn't that [591] correct? A. That is correct.

Q. That is the theatre that Mr. Mitchell mentioned that you refused to play day and date, isn't that correct? A. That is correct.

Q. Including the Warner's Huntington Park Theatre in Huntington Park, isn't that right?

A. Sometimes.

Q. Including the Westwood Theatre in Westwood, isn't that correct?

(Testimony of George A. Hickey.)

A. The Westwood Theatre? That is the Picwood, isn't it?

Q. It may be the Village Theatre in Westwood. That would be perhaps more accurate.

A. It could be the Village.

Q. How about the Garmar Theatre in Montebello? A. That's right.

Q. I can't locate Montebello on the map.

A. That's right.

The Court: Now, Mr. Hickey, I understand from your testimony that up to a certain date, you only played two theatres first run in Los Angeles.

The Witness: That's right.

The Court: One downtown and one in Hollywood.

The Witness: That is correct. [592]

The Court: Sometimes you changed the policy where you played more than two theatres first run in Los Angeles.

The Witness: That is correct.

The Court: Do you know when that was done?

The Witness: I don't know the exact date.

The Court: Approximately.

The Witness: Well, it was a couple of weeks before we put Guys and Dolls in the Paramount Theatre, whatever date that was.

The reason that this change come about was because the theatre set-up in the city of Los Angeles changed, and we couldn't follow what we used to do. In other words, when they took the Egyptian

(Testimony of George A. Hickey.)

Theatre away from me and put in Oklahoma for a run, and it will probably run a year or more, that broke up my combination of a theatre downtown and a theatre in Hollywood, so I had to think and worry about what we would do from there on.

So the Paramount is closed up, they are closed up now for the next five months with pictures. We can't get in there.

The Chinese run their own pictures.

The Vogue Theatre is not a good showcase, so we can't pick that to replace the Egyptian.

The Hawaii Theatre is too far down. Anything below La Brea, or anything below—well, anything below that [593] street where the Pantages is on the corner there, I think it is Highland, isn't it? Anything below the Pantages Theatre is not a good location for any first run theatre.

Women will not go down there. There is no matinees down there, and the Pantages is closed up. We can't get into the Pantages, only once in a while.

So our combination of showcases has been broken up. We can't follow that now like we used to.

I would give anything if I had a good first-class theatre in Hollywood that I could run with downtown Los Angeles, and not run any other theatres in the city at the same time, but that has been closed to me. It was forced upon me. I didn't make—I didn't choose to put Oklahoma into the Egyptian Theatre. The owner of that theatre took it away from me, and the owner of that theatre is the

(Testimony of George A. Hickey.)

United Artists, so I had no choice. They just took it from under me, so there is nothing I could do, so what am I going to do? Put my pictures on the shelf? Spend a couple of million dollars, two or three million dollars to make one, and then put it on the shelf and not seek a way out?

So the best thing that I could do is to find what they call a multiple run in order to put my pictures into a lot of theatres at one time.

I put Blackboard Jungle in the drive-ins, eleven drive-ins at one time, and got quite a nice rental out of it, [594] but it wasn't because, or it wasn't for the reason that anybody would think when you asked that question. It wasn't for that reason.

Q. (By Mr. Corinblit): Mr. Hickey, I don't—

Mr. Mitchell: Wait a minute. He is answering the court's question.

The Witness: I beg your pardon?

The Court: Go ahead.

Mr. Mitchell: I am just trying to keep you from being interrupted.

The Witness: It wasn't for that reason that we gave this multiple run, not at all. It was because we were forced to give it up, and there is no decent theatre in Hollywood, on Hollywood Boulevard, that can take the place today that is open for us of the Egyptian Theatre. There is none.

There is the Iris Theatre. It is a second-rate theatre.

(Testimony of George A. Hickey.)

There is the Hollywood Theatre, and it is a second-rate theatre.

The Fox Music Hall is a second-rate theatre.

There is nothing we can do for a multiple run.

The Hawaii Theatre is in the same bad location that the Fox Music Hall is in on Hollywood Boulevard, and the Pantages we can't get.

The Vogue is not sufficient—— [595]

The Court: Now, Mr. Hickey, you have gone over that once before and you have made your explanation. It is nearly 4:00 o'clock and I think we can leave the case with your explanation. You will probably be cross examined on that.

The Witness: I just want to say one more thing, if you will permit me, your Honor, that the Warner Bros. Theatre has been taken out of circulation and they are running Cinerama there, so there is no theatres.

The Court: You will probably be cross examined on this next week.

Mr. Corinblit: Yes, your Honor.

The Witness: I hope not. [596]

* * * * *

Q. (By Mr. Corinblit): Mr. Hickey, when we terminated last Friday, you had stated to the jury what you said were your reasons why in 1955 there was no economic necessity for confining your play-off to two theatres, while in 1950 your statement had been that there was an economic necessity and this was the excuse that you gave [602] to Mr.

(Testimony of George A. Hickey.)

Schreiber for not permitting him to play day and date first run.

The record shows, Mr. Hickey, that your statement was the reason in 1955, because you were forced to give it up. I think you stated that the combination was broken up.

Now, first I want to get clear, the combination to which you refer was the Loew's State downtown and the Egyptian in Hollywood, is that right?

A. That is correct.

Q. The way in which the combination was broken up, you stated, was that the Egyptian went into a long run of the motion picture Oklahoma and that was the reason for the break-up of the combination. That is what the record shows.

Now, Mr. Hickey, the record shows, and we have the newspapers here if you have any question about it, that the Egyptian closed on about October 5, 1955, and that it opened Oklahoma November 18, 1955.

The record is also here, and you may examine it, which shows that the first time that Loew's had the multiple day and date was 22 weeks before the Egyptian closed for the purpose of going into Oklahoma. That is in May of 1955.

Do you remember that to be a fact?

A. Yes, I remember that, but I would have to explain that.

Q. All right. Just a minute and we will give you the opportunity. [603]

(Testimony of George A. Hickey.)

Mr. Mitchell: Now, just a minute. Let him explain.

The Court: Let him explain now while the question is fresh.

Q. (By Mr. Corinblit): All right, you go ahead.

The Court: Go ahead and explain.

Mr. Corinblit: Could we get it clear on the record——

Mr. Mitchell: Counsel is testifying here, your Honor. I haven't stopped him from testifying, but having testified or argued once, I think that is enough. Can't the witness now explain his answer.

The Court: Read the question to the witness.

(Question read.) [604]

The Court: All right. Now, make your explanation.

The Witness: We knew eight or nine months before the Egyptian went into a run with Oklahoma that they were going into a long run with Oklahoma that would run a year or more.

So, during that period we were running over in our minds what we would do when Oklahoma went into the Egyptian. We didn't have a release every week at that time, so the Egyptian put in a Warner picture.

I think the name of the picture was Battle Cry. And they ran that picture six weeks. Then we put in another picture after Battle Cry and they run that six weeks.

Just at that time, when they run the last picture, I had talked to my manager and we decided then

(Testimony of George A. Hickey.)

that we would have to do something before it was too late.

So we decided we would go into a multiple run. That was the only thing that was left for us to do. There was no theatre in Hollywood that we could get to take the place of the Egyptian, so we decided to go into a multiple run.

We sent it into New York to the legal department to see if it was proper and all right legally. Then Mr. Saunders and Mr. Melniker come out to Los Angeles and we went all over it with them. Then they went back to New York and in a few days after that they notified us that it was all right to go ahead and go to the multiple as long as there was no other place to put our pictures. [605]

So we went then into the multiple. We sent out bids to everybody, including the theatre, the Paradise Theatre. They had the same right to bid that everybody else had for the multiple run.

So we opened up the multiple run with Blackboard Jungle.

Q. (By Mr. Corinblit): May I stop you there, if I may, your Honor. I want to get clear before you go on, Mr. Hickey—— A. I can't hear you.

Q. I say I want to get clear with respect to the picture Blackboard Jungle.

I think you testified, Mr. Hickey, that you couldn't get into—your statement now is that you couldn't get into any other theatre other than the Egyptian on Hollywood Boulevard, isn't that correct?

(Testimony of George A. Hickey.)

A. For a steady multiple run theatre. I mean a steady showcase theatre.

Q. And is it your testimony that you couldn't get into the Pantages Theatre?

A. No, not as a steady theatre, no. You see, when we had—when we have a showcase you have got to have a showcase with a theatre downtown and a theatre in Hollywood that can run your pictures regularly.

Q. Now, I had thought, Mr. Hickey, that you testified yesterday that there was bidding for first run downtown. [606]

A. That there was what?

Q. Bidding. A. There is.

Q. Well, then, when you bid you don't know what theatre you are going to get downtown, do you? A. That is true.

Q. And there was bidding before you went into the multiple day and date, is that right?

A. That is right, and there is still bidding. [607]

Q. So you didn't know before you went to multiple day and date what theatre you were going to get downtown, did you? A. That is correct.

Q. In Hollywood there was also bidding?

A. That's right, but I do know this—

Q. May I—

Mr. Mitchell: Let him finish his answer.

Mr. Corinblit: No.

The Court: Now, both of you can't talk at the same time. You listen to the question, and then

(Testimony of George A. Hickey.)

when the answer is being made, you allow him to make the answer.

Mr. Corinblit: Very well, your Honor.

The Court: All right. Put your question.

Mr. Mitchell: May he not finish his answer, your Honor?

The Court: Let's put the question again.

Q. (By Mr. Corinblit): When you played in Hollywood before you went multiple day and date, you also had bidding, is that right?

A. That is true.

Q. And you didn't know in Hollywood what theatre was going to get the bid first run?

A. That's right.

Q. Now, the first picture that you opened, as a matter of fact, *The Blackboard Jungle*, the theatre in Hollywood that [608] played the picture was the Pantages, wasn't it? A. Yes.

Q. Now, Mr. Hickey, with respect to this matter of show case, we want to get this one thing clear. It is undoubtedly true that when you went to multiple first run, if you were to compare a week's revenue from multiple first run to the week's revenue from the two-theatre first run, the revenue received from the multiple run far exceeds the first run revenue from a week of the two theatres, is that correct? A. No, I wouldn't say that.

Q. That is, you wouldn't say you got more money from *Blackboard Jungle* on the multiple first run than you received theretofore first week from playing in two theatres, generally?

(Testimony of George A. Hickey.)

A. On that picture, we did.

Q. I take it the arrangement here on multiple first run was 11 theatres, that is, sometimes you had as many as 11 theatres playing first run?

A. That's right.

Q. Is that correct? A. That is correct.

Q. They were spotted all around this area, correct? A. That is correct.

Q. And they included a theatre downtown just as you had included one before, correct?

A. That is correct. [609]

Q. And a theatre in Hollywood just as you had included one before, is that correct?

A. That is correct.

Q. And in addition to that, seven, eight or nine other theatres. A. That is correct.

Q. Now, I think you testified, Mr. Hickey, that one of the important things that you said was the economic reason in 1950 for refusing Mr. Schreiber the opportunity of playing day and date was word of mouth advertising, is that right?

A. That's right.

Q. Now, word of mouth advertising depends to a great extent on the number of people that see a picture in the early run, isn't that right, to some extent?

A. To some extent, but that isn't—the reason we wanted it, and I will have to repeat myself, the reason that we wanted a show case theatre downtown and a show case theatre in Hollywood is for one reason only, and that is to make our pictures

(Testimony of George A. Hickey.)

more profitable in the theatres that you might call multiple runs that run them after the show cases, because, as I said before, we spend as much money advertising a picture—more money advertising a picture, I should say, than we get out of the picture in rental in those show cases, and then after that the word of mouth and the advertising that we do, then if you put them into the multiple run, then they are [610] worth twice as much to the multiple run and other theatres that run them afterwards as they are before that.

The Court: May I ask a question?

The Witness: Yes.

The Court: When did you start the multiple run?

The Witness: I believe the multiple run—and I am not positive, your Honor—I believe that the multiple run was started on May 11, if I am correct.

The Court: In what year?

Mr. Corinblit: 1955.

The Witness: 1955.

The Court: When you decided upon multiple first run, besides downtown Los Angeles and Hollywood, you were going to put the first run picture in these other localities, how did you choose the other localities, or how did you choose the theatres?

The Witness: We didn't choose the theatres, your Honor. We sent out bids.

The Court: You sent out bids to all the theatres?

The Witness: All of them.

(Testimony of George A. Hickey.)

The Court: In Los Angeles?

The Witness: No, not all, all in the adjacent suburbs in Los Angeles, like Inglewood and Pasadena and down in the Valley, these small theatres in—Beverly Hills was not included—Redondo Beach and Inglewood and the Paradise [611] Theatre and the Loyola Theatre, all of those theatres, such theatres as that was included in the bids.

The Court: You sent out notice and they bid?

The Witness: They bid.

The Court: Then I understand, do I, that the multiple first run theatres changed from picture to picture, that is, one theatre wouldn't get the picture all of the time?

The Witness: Oh, no. It all depends on who gives us the best bid. A lot of drive-ins, they were all asked to bid, too.

The Court: For instance, let's take Inglewood, you wouldn't have one theatre in Inglewood that you gave the exclusive right to have first run pictures?

The Witness: No, sir. We didn't give anybody exclusive right. We sent the bids to every theatre in Inglewood, including the Paradise Theatre and the Loyola Theatre and everybody in that area up as far as Redondo Beach and Gardena.

The Court: So you didn't actually designate certain theatres to be first run theatres in those various districts?

The Witness: No, sir, we did not. [612]

(Testimony of George A. Hickey.)

The Court: They were selected on the bidding principle?

The Witness: That is correct.

The Court: You may proceed.

Q. (By Mr. Corinblit): Now, Mr. Hickey, I want to return for a minute to the question I was asking you before you made the explanation, that is the matter of the word of mouth advertising.

Just to get the simple fact established, you don't have any doubt, do you, that when you played multiple day and date in eleven theatres as compared to playing for a week—as compared to playing multiple day and date in only two theatres, that more people saw your picture in that first run in that first week in the multiple group than had seen them prior thereto. Do you have any doubt about that?

A. I just didn't understand that question.

Q. Well, under the multiple principle theory you had eleven theatres playing your picture, as many as eleven pictures playing in the first week first run and under the two exclusive theory you had only two theatres playing first run.

My question is, it is true, is it not, that more people, on the average, saw your—see your picture in the first week under the multiple run than did in the first week under the two theatre run?

A. Well, that could be and on the other hand no, because [613] what we are after mostly is to earn money on our pictures.

(Testimony of George A. Hickey.)

The Court: Well, you earn money by reason of the attendance of patrons, do you not?

The Witness: That is correct.

The Court: In other words, the people who come to the theatre?

The Witness: That is true, but we earn money by having two multiple runs and advertising the pictures so as the pictures, when they get to the various neighborhoods, will be worth more money in the neighborhood. There are a lot of people that don't go to the first run theatres. That is true. But there is a lot of people that do and there is somebody comes from each one of these areas.

There is a certain percentage that comes from Inglewood. There is a certain percentage that comes from Westwood, Santa Monica, down in the Valley, out in East Los Angeles and Whittier.

The word of mouth advertising—they tell people that they see a great picture and the word of mouth helps and the advertising in the papers that we do helps. So, the people—when that picture comes to their favorite theatre in their town, they go to see it.

That is where we get the benefit of advertising.

Q. (By Mr. Corinblit): Now, let us go for a minute to this other fact which you have mentioned, that there are [614] some people that come from Inglewood and some people, I think you said, came from Westwood and some people you said came from East Los Angeles.

(Testimony of George A. Hickey.)

A. Some people come from every area.

Q. From every area.

A. But not enough to hurt any theatre in any of those areas.

Q. All right. Now, when a man under your two-theatre principle wanted to go from Inglewood to see a first run picture, he had to travel this route through this traffic to get to Hollywood, or here through this traffic to get to downtown, is that right?

A. That is true, you have got to get there.

Q. Now, when you have the multiple first run the same man in Inglewood area has got a much shorter distance to go to see a first run, hasn't he?

A. Yes. Well, it is well advertised then.

Q. Now, the same thing is true with respect to each one of these areas, that is to say, you increase the convenience with which the members of the public can get to a first run theatre in the Los Angeles area by having a multiple day and date, don't you?

A. Well, it is probably—it probably is a little easier for them to get to it.

Q. A little easier? [615]

A. But if it wasn't well advertised they wouldn't go to see it. They wouldn't know anything about it.

Q. All right.

A. For instance, we spent \$41,580 to advertise Guys and Dolls. You don't think we spent \$42,000 and that amount of money just because it was play-

ing in the Paramount Theatre in Hollywood, do you? We didn't spend it for that.

We spent it so that the people around the city and in the county would know about it and go to see it when it come to their theatre. And then when it went into multiple runs it was worth more.

Q. Now, Mr. Hickey, let us turn to this matter of advertising for a moment.

On this advertising program that you say you ordinarily have, is that divided—a considerable extent goes to newspaper advertising, is that right?

A. It goes to newspaper advertising, some of it, but——

Q. More than half?

A. But for your information if you would get a minute or a half minute on television once every day in the week, it would cost us \$15,000.

Q. All right.

A. And it cost us \$50 an inch for newspaper advertising.

Q. Mr. Hickey, with respect to newspaper advertising. In general, that advertising is accomplished by placing a big [616] ad in the newspaper, is that right, with a picture and maybe some publicity about it?

A. It could be a big ad or a small ad.

Q. Now, the only difference between newspaper advertising on multiple run as distinguished from newspaper advertising on two runs, is the fact that instead of the name of two theatres you have got eleven theatres, isn't that right?

A. That is right.

(Testimony of George A. Hickey.)

Q. Now, and as a matter of fact, with eleven theatres—I will withdraw that question for a moment.

It is true, is it not, on some of your newspaper advertising you ask the exhibitors, the first run exhibitors to pay some part of the newspaper advertising, is that correct?

A. Yes. They would pay—they would pay \$250 and the advertising that the company would do, our company would do would be, in a lot of cases, \$10,000.

Q. All right. Now, when you had eleven theatres to share the cost of your advertising, as distinguished from two theatres to share the cost of your advertising, that made it easier, did it not, for Loew's to get a share of the advertising?

A. No, not much.

Q. From the exhibitor?

A. Not much easier, because as I said they only spent [617] \$250. If they were running the picture alone they would have to spend more than that because they wouldn't have any help from our company.

Q. Well, the share of multiple first run in your advertising program sometimes goes as high as \$7,500, does it not?

A. Well, it all depends on the theatre. The majority of them pay \$250.

All the theatres—all the drive-ins give us now is \$250. The Pickwood Theatre once in a while gives us \$700. It varies.

Q. I am talking about in total from eleven the-

(Testimony of George A. Hickey.)

atres. If you add up the total that all of the theatres give you in advertising it might reach as much as \$7,500? A. Oh, no.

Q. It doesn't? A. I don't think so.

Q. Don't you have a picture——

A. I don't think so without figuring it up.

Q. Would it be as much as \$5000?

A. No, I don't think it would reach \$5000, but we add \$10,000 and more to it. [618]

Q. Now, with respect to—I think you have made this statement, but I want to get it clear—the purpose of the advertising that you do has to do with all of the runs in the L. A. area, isn't that right? That is, you are trying to establish the picture for the entire area by the advertising that you do?

A. That is correct.

Q. Now, Mr. Hickey, in fact, you know that not only has your company gone to multiple first run, but every single company that in 1950 gave Mr. Schreiber the excuse of economic necessity, every single company has gone to multiple first run in the Los Angeles area, isn't that correct?

A. I don't know anything about any company but Metro-Goldwyn-Mayer.

Q. You don't know that Paramount is now multiple first run?

A. No, I am under oath here to tell the truth and I can't tell you what Paramount does or any other company does.

Mr. Corinblit: We have got counsel for Para-

(Testimony of George A. Hickey.)
mount here. Will you stipulate Paramount is on multiple first run?

Mr. Mitchell: No. Eleven out of the last 16 pictures have been show cased in individual theatres on Hollywood Boulevard.

Mr. Corinblit: You have not had the multiple first [619] run immediately after pre-release?

Mr. Mitchell: Immediately after show case, they go into numerous theatres.

Mr. Corinblit: And from 1952 on, did you have a multiple first run policy?

Mr. Mitchell: The same situation as I say. Pictures were often show cased ahead of time and were then put into numerous suburban theatres.

The Court: Mr. Corinblit, you are going to have somebody here from Paramount, and they can testify to what they have done, rather than ask counsel to stipulate.

Mr. Corinblit: Yes, sir, I can do that. I thought we could get a quick stipulation with respect to all these companies, because there will be no argument about it.

Mr. Mitchell: There will be an argument about it the way he says it, because he said it wrong.

The Court: Just a minute. There is an argument now so there is no question about an argument.

Q. (By Mr. Corinblit): Now, Mr. Hickey, as you have explained to the court, under the multiple day and date policy, it is perfectly possible for a theatre owned by United Artists in Pasadena to play simultaneously with a theatre owned by War-

(Testimony of George A. Hickey.)

ners downtown and a theatre owned by RKO in Hollywood, and another independent theatre in some other part of the city, isn't that correct? That is perfectly possible? [620]

A. That I don't know.

Q. Perhaps my question isn't clear. It has happened on the multiple day and date that you will have a United Artists Theatre in Pasadena play at the same time that a theatre in downtown that was not owned by United Artists would play, isn't that right?

A. That may be possible.

Q. Because you have got bidding in each area.

A. That may be possible.

Q. And, therefore, you can have different ownerships playing simultaneously with each other.

A. That is true.

Q. Do you remember the exhibit I showed you with respect to the Loew's play-off through the year September 1951, that there was not a single example on that list of probably over 1500 pictures from 1945 on where the—I will withdraw that in terms of number of pictures. I was thinking of all of the pictures, overall. It would be really about 30 pictures a season.

It was true with respect to all of Loew's pictures that they never played simultaneously in theatres that were not owned by the same ownership?

Mr. Mitchell: Wait a minute. That is not so. We have a situation of playing simultaneously in the Orpheum Theatre and the Hawaii Theatre, which were not under the same [621] ownership.

(Testimony of George A. Hickey.)

The Court: Sustained. The exhibit is the best evidence.

Mr. Corinblit: Very well, your Honor.

Q. The fact is, is it not, Mr. Hickey, that now only since the multiple first run policy does an independent exhibitor like the Paradise get an opportunity to play on first run, as it never had prior to the multiple first run policy? That is correct, isn't it? A. No, that isn't correct.

The Court: Well, you say multiple first run. Since bidding was established, all theatres have the right to come in and bid, do they not, regardless of whether they are owned by the chain or owned by the individual?

The Witness: That is true.

Mr. Corinblit: Very well. May I have access to the bidding file of Loew's, counsel?

Mr. Westbrook: Those you had before are in the file cabinet.

Mr. Corinblit: Well, you had them over the weekend.

Q. (By Mr. Corinblit): Mr. Hickey, I want to begin with respect to this bidding matter with the date September 1949 and then come up through the period in which the Paradise Theatre was opened. Now, I will ask you to examine the same [622] records that Mr. Mitchell, that is the same type records with respect to a prior period that Mr. Mitchell had you examine.

Mr. Mitchell: With respect to 1949, I object upon the ground that it is not proper recross. I

(Testimony of George A. Hickey.)

made no questions about 1949, and therefore he should be restricted from expanding the scope of recross examination.

The Court: Overruled.

Q. (By Mr. Corinblit): Now, October 1949—I am sorry these are not quite in order—October 1949, I want you to confirm with respect to the picture *Midnight Kiss*, you sent requests to bid to the La Tijera and to Fox, and that Fox returned a bid only for the United Artists Theatre, and not for the Academy Theatre, and that the La Tijera did not bid. Is that correct?

A. We have a bid here for the United Artists.

Q. But not for the Academy, correct?

A. No, I don't see any bid for the Academy.

Q. All right.

A. Nor the La Tijera, either. Lots of theatres don't bid even though we send them the bid asking them to bid, they don't bid. Sometimes we don't get any bids. Then we have to re-solicit them.

Q. On the picture, in November 1949—well, there is no return on that. Let's turn to this and we will come back to the period there, but let's turn to February 7, 1950. [623]

Mr. Corinblit: The fact is, is it not, counsel, that after—I think counsel for Fox will stipulate that on or about this date Fox was no longer interested in the United Artists Theatre, is that correct?

Mr. Johnston: I will have to beg your pardon, Mr. Corinblit. I was looking at a document and

(Testimony of George A. Hickey.)

wasn't paying any attention to you. Will you put the question to me again?

Mr. Corinblit: The date on which Fox no longer had any interest in the United Artists Theatre in Inglewood, didn't operate the theatre, is what? What is the approximate date when they no longer operated?

Mr. Johnston: The interest was changed as of January 1. I think the theatre was operated for a short time after that for the account of the United Artists Theatres Circuit.

Mr. Corinblit: By Fox?

Mr. Johnston: Yes.

The Court: January 1 of what year?

Mr. Johnston: 1950.

Q. (By Mr. Corinblit): For the picture Tension, the record shows that you sent out bids to Fox, you sent out bids to United Artists, and you sent out bids to La Tijera. I want you to confirm the fact that the operator of Fox sent you a letter in which he stated—well, the operator at that time was Fox, because they were still operating the United Artists Theatre. [624]

Mr. Mitchell: What is the date of that?

Mr. Corinblit: The picture is Tension. The date on which the notices went out was January 24 and the final date of entry here is February 7, 1950.

This overlaps, perhaps, the period Mr. Johnston referred to.

Q. Now, the record show that in response to that bid, that request to bid, Fox bid on behalf of

(Testimony of George A. Hickey.)

the United Artists but not on behalf of the Academy, and the La Tijera did not bid, is that correct?

A. That is correct.

Q. The next picture—the picture *That Forsyte Woman*, February 14, 1950.

You sent out bids to United Artists, Fox, La Tijera. Fox sent back a letter, “We don’t wish to make any offer.” United Artists sent back a bid. La Tijera did not bid. Is that correct?

A. Yes.

Q. The only company from which you received a bid was United Artists?

A. That is not unusual.

The Court: Well, you can answer that “Yes” or “No.”

Q. (By Mr. Corinblit): That is correct, is it not? A. Correct.

Q. With respect to the next picture, *Malaya*, you sent [625] out letters to Fox, La Tijera and United Artists. Mr. Pirosh for Fox sent you a letter saying, “We do not wish to make a bid.” Your records show the La Tijera did not bid so the only theatre that bid was the United Artists, correct?

A. Correct.

Mr. Mitchell: What is the date of that?

Mr. Corinblit: It covers a date, counsel, from February 14 to February 27, 1950.

Q. The next picture is——

Mr. Mitchell: May we have a date on each of them because these are all long prior to the *Paradise*.

(Testimony of George A. Hickey.)

Mr. Corinblit: We will give you the date, all right.

Q. The next picture—two pictures.

Mr. Johnston: Do you want to stipulate the Paradise opened in August of 1950 so we can be clear about it?

Mr. Corinblit: Yes.

Mr. Johnston: Thank you.

Q. (By Mr. Corinblit): The next picture is East Side, West Side, and Challenge To Lassie.

Your requests went out February 24, 1950, to the La Tijera, Fox and United Artists. Mr. Pirosh of Fox West Coast sent you a letter, "We do not wish to make a bid."

United Artists put in a bid. La Tijera did not bid, correct? A. Correct. [626]

Q. The next picture, Ambush. You sent out letters requesting bids to the La Tijera, Fox and United Artists of March 3, 1950. Mr. Pirosh of Fox sent you a letter, "We do not wish to make a bid."

The La Tijera did not bid. The only company that bid and won the picture was United Artists, is that correct? A. Yes, sir.

Q. Now, Mr. Hickey, during this period when you were sending out offers to three companies and regularly only one company was sending back a bid and regularly Mr. Pirosh of Fox West Coast was telling you "I don't want to bid."

During that period, right around that time Mr. Schreiber come to see you and asked you for pictures, did he not?

(Testimony of George A. Hickey.)

Mr. Mitchell: That period, your Honor, as I assume is the period covered by those letters, namely January and February 1950.

Mr. Corinblit: All right. Mr. Mitchell's objection is well taken.

Mr. Johnston: Mr. Corinblit, I assume you are going into the rest of the letters that you represented to the court that you would, during the whole period of the Paradise operation.

Mr. Corinblit: If you will permit me to conduct my own examination.

Mr. Johnston: I just want you to do what you said you [627] were going to do.

Q. (By Mr. Corinblit): Now, Mr. Hickey, right about the time that this procedure was being carried on, Mr. Schreiber came to see you. That would be about the end of March, 1950, isn't that right?

A. I don't remember dates.

Q. You don't recall dates. All right. I will show you a document which has not been marked. I believe it is identified as an exhibit of Loew's. Will you confirm it? This is one of your exhibits.

(Handing document to Mr. Westbrook.)

Mr. Westbrook: Just a moment. Defendant's Exhibit A-10 for identification.

Mr. Corinblit: I think we can use this copy for the purpose of refreshing your *collection*.

Q. I will show you a document, Mr. Hickey, which is a duplicate of Defendant's Exhibit A-10, which is a letter from Hickey to Isenberg dated March 30, 1950, and ask you if that refreshes your

(Testimony of George A. Hickey.)

recollection that Mr. Schreiber came to see you at the end of March 1950?

A. Yes, I remember I stated before that Mr. Schreiber was in to see me three or four times. That I answered once before.

Q. All right. Now, let us go back just a little bit, prior to that March 30th date. [628]

The first communication you had from Mr. Schreiber was on February 6, 1950, I believe, and I will offer in evidence Plaintiff's Exhibit D-1 and D-2.

The Clerk: Plaintiff's Exhibit D?

Mr. Corinblit: D-1 and D-2. I am sorry. Pardon me. I was giving the numbers in the deposition. They are Exhibit 6-A, 6-B, 6-C, 6-D.

(Handing documents to Mr. Mitchell.)

Mr. Corinblit: I offer in evidence, Exhibits 6-A, -B, -C and -D.

The Court: They may be received.

(The exhibits referred to were marked Plaintiff's Exhibits 6-A, 6-B, 6-C and 6-D, and received in evidence.) [629]

* * * * *

Q. (By Mr. Corinblit): Now, after this exchange of letters, Mr. Hickey, Mr. Schreiber wrote another letter to New York dated March 6, 1950, and I will offer that as Plaintiff's Exhibit [631] 6-E in evidence.

The Court: It will be admitted.

(The exhibit referred to was marked Plaintiff's Exhibit 6-E, and received in evidence.)

* * * * *

(Testimony of George A. Hickey.)

Q. (By Mr. Corinblit): Now, as indicated, Mr. Hickey, subsequently Mr. Schreiber did stop in to see you and I think you testified that he asked you if he could have the privelege for his [632] Paradise Theatre of playing a non-exclusive first run—that is simultaneously with the two theatres that you were playing first run, and you said no, is that correct? A. That is correct. [633]

Q. And then he asked you if under those circumstances could he possibly have the privilege of playing pictures on a 7 day availability, isn't that correct? A. That is correct.

Q. He asked you if he could play on 7 day availability in Westchester.

At that time where were the other 7 day situations in the Los Angeles area? You had one in Inglewood, didn't you? A. One in Inglewood.

Q. And that legally is a separate city, isn't it, the city of Inglewood, or do you know?

A. I believe so.

Q. You had one in the area known as Belvedere Gardens, didn't you? A. I don't remember.

Q. That is the Golden Gate in Belvedere Gardens? You remember that, don't you?

A. I really don't. If I did, I would say so, but I don't remember.

Mr. Corinblit: Can we have a stipulation on that, or do you want to check the facts that Loew's had a 7 day situation in Belvedere Gardens?

Mr. Mitchell: Yes, but not at the Golden Gate Theatre. They had a 7 day situation on a bid. [634]

(Testimony of George A. Hickey.)

Mr. Corinblit: All right. You were permitting 7 days in the Belvedere Gardens area.

Q. Where was the other place that you were permitting 7 days?

A. Well, we had it in Pasadena.

Q. Pasadena, and where else?

A. I believe we had 7 days in Culver City.

Q. Culver City. Any place else? How about Glendale?

A. Might have had it in Glendale.

Q. How about Huntington Park?

A. Well, I really don't remember without looking at the records. I wouldn't say.

Q. If I remind you of the name of the Fox California in Huntington Park?

A. That wouldn't help any.

Q. That wouldn't help?

Mr. Mitchell: I will stipulate with you that they had a 7 day run on bid in Huntington Park.

Mr. Corinblit: Counsel, I wish you wouldn't ask for that stipulation on bid, because we will have that question gone into, if you want to, but don't state it was on bid.

Mr. Mitchell: Well, that is the fact so that's all I can say.

Q. (By Mr. Corinblit): Mr. Hickey, can you tell me, if [635] you remember, you have been with Loew's a long time, those areas having 7 days—

The Court: Mr. Corinblit, Mr. Hickey is a little hard of hearing. You are dropping your voice.

Mr. Corinblit: Yes, sir. All right.

Q. In fact, those 7 day areas are the same 7 day

(Testimony of George A. Hickey.)

areas you had in Los Angeles when Los Angeles had 50 per cent of the population it has now, isn't that right?

A. It may be. I don't know. All I know is this, that we offered, and it states in this letter, we offered the Paradise Theatre 7 days if they would bid for it.

Q. All right. We will come to that in just a moment. Taking your attention to prior, just in 1949, in 1949 it is a fact, isn't it, that every one of these areas were Fox towns, isn't that right?

A. I didn't hear.

Q. Each one of those areas were Fox towns that had the 7 day right, isn't that right?

A. That might be.

Q. Now, in this greater Los Angeles area, in fact, although it is a long way, and I will admit it, but I think you might have told the court that there was no other theatre in the city of Los Angeles that had anything earlier than 21 days. I may be wrong on that part, but——

A. You were wrong. [636]

Q. But the fact is you had a theatre——

Mr. Mitchell: What did you say, Mr. Hickey?

The Witness: He was wrong.

Q. (By Mr. Corinblit): All right. Then the fact is that you had a first run theatre in San Pedro, which is a part of the city of Los Angeles, did you not?

A. Well, I will tell you about San Pedro.

Q. May I interrupt just a minute? Could you

(Testimony of George A. Hickey.)

answer that question yes or not? A. Yes.

Q. You did have? A. Yes.

Q. All right, go ahead and explain.

The Court: Now make your explanation.

The Witness: San Pedro at the time that we awarded them that run was not connected in any way with the city of Los Angeles. During the time or at a period of time after that, the city of Los Angeles took in a certain portion of that area out there so they could get an outlet to the harbor, and then it become, of course, a part of Los Angeles. But when we awarded this in the first place it was not a part of Los Angeles.

The Court: May I inquire, what theatre had the first run in San Pedro?

The Witness: I really don't know, your Honor. I [637] can't tell you because——

The Court: Was it a Fox theatre or was it an independent theatre?

The Witness: In San Pedro, there is a Warner's theatre we done business with, and there is a Fox theatre, and there is a drive-in out there.

The Court: When you first went into San Pedro there was no drive-in. That was a long time before drive-ins.

The Witness: No, there was no drive-in, but when we first went into San Pedro, I think there was a Fox and Warner's theatre.

The Court: Do you remember which theatre was given the first run right?

(Testimony of George A. Hickey.)

The Witness: No.

The Court: That was before the days of bidding.

The Witness: No, I do not.

The Court: All right. I notice, Mr. Corinblit, it's 11 o'clock and maybe since I interrupted you it is a good place to take the morning recess.

Ladies and gentlemen of the jury, we are about to take our recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it *with you* are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you. [638]

With that admonition we will now recess until 15 minutes after 11:00.

(Recess.) [639]

The Court: Is it stipulated the jury are present and in the jury box?

Mr. Corinblit: So stipulated.

The Court: You may proceed.

Q. (By Mr. Corinblit): Mr. Hickey, a moment ago the court asked whether or not you remembered what was—whether there was a Fox theatre in San Pedro that you played first run, and I wanted to refresh your recollection.

I show you a transcript of a deposition you gave in the case of Fanchon and Marco v. Baldwin, and call your attention to page 1964, the question that I have marked here, and ask you if you will examine that question and that answer and see if that doesn't refresh your recollection that that was a

(Testimony of George A. Hickey.)

Fox theatre that played on 7 days prior to the drive-in coming there.

Mr. Mitchell: That was Fanchon and Marco against Warners or some company involving the Baldwin Theatre.

Mr. Corinblit: I beg your pardon, that is correct.

The Witness: Yes, that is true.

Q. (By Mr. Corinblit): So it was the Fox Granada? A. Yes.

Q. Now, as a matter of fact—now, I want to get this clear, Mr. Hickey,—when you went to seven days in San Pedro you stated it wasn't in Los Angeles?

A. Well, I could be mistaken about that. I was thinking [640] that over, and I believe that that change was made in 1912. That is before I was born.

Q. So that when you went day and date in San Pedro, San Pedro was already a part of the City of Los Angeles, isn't that right?

A. Yes, I think that is right.

The Court: Day and date? When you first went down to San Pedro, a first-run theatre in San Pedro, San Pedro then was a part of Los Angeles?

The Witness: Yes, sir.

Q. (By Mr. Corinblit): Now, not only is that correct but it is also true that you had a 7-day theatre in Wilmington, isn't that right?

A. That could be possible. I don't remember.

Q. And Wilmington was a part of the City of Los Angeles, no question about that?

(Testimony of George A. Hickey.)

A. Yes, but that is about 30 miles away, or 35 miles away. San Pedro is 35 miles.

Q. Now, when Mr. Schreiber came to see you, you told him—in March of 1950—you told him that you would not permit him to have a day and date availability of seven days in Westchester, isn't that correct? A. That is correct.

Q. And of course you told him you would not permit first run Los Angeles in Westchester? [641]

A. That is correct.

The Court: Mr. Hickey, didn't I understand you to say the other day that you told Mr. Schreiber that the reason you wouldn't give him seven days in Los Angeles was because you did not have any 7-day theatres in Los Angeles city limits?

Mr. Mitchell: Your Honor, he never said he wouldn't give him seven days. He always has said he would give them seven days if they bid for it.

There was no testimony—

The Court: But at the original time Mr. Schreiber came in and asked for pictures, he asked for first run and then he asked for seven days.

Mr. Mitchell: Yes.

The Court: And my understanding was that Mr. Hickey said, "We will not give you seven days because we do not have seven days in Los Angeles City."

Mr. Corinblit: I think I may be able to find that in the record.

The Court: And I think that is what he testified to.

(Testimony of George A. Hickey.)

Now, do you recall that you told us that?

The Witness: I believe I do.

The Court: Then the fact of the matter is, you did have two 7-day theatres in the Los Angeles city limits, one in San Pedro and one in Wilmington?

The Witness: As I said here, I wasn't positive that San [642] Pedro was in Los Angeles, and then I came and said I found out that it was. [643]

The Court: I know, but when you told Mr. Schreiber you wouldn't give him 7 days because you didn't give any 7 day availability in Los Angeles city limits, the fact of the matter is at that time you did have a 7 day theatre in the city limits, although it was in San Pedro, 35 miles away from downtown Los Angeles.

The Witness: That's right.

Mr. Corinblit: I think, your Honor, the testimony was that the 7 day theatre was in Wilmington and the first run theatre in San Pedro.

Q. Is that correct, Mr. Hickey, or were they both 7 days? A. I didn't hear that.

Q. The 7 day theatre was in Wilmington and you had a first run theatre in San Pedro, is that right, day and date with downtown?

A. Yes, they could run, but they don't as a rule run day and date with downtown.

Q. All right. Now, Mr. Hickey, you did state to Mr. Schreiber when he came to see you that you will not permit day and date first run, but you will require him as a condition for obtaining 7 day availability to bid against the theatres in Inglewood,

(Testimony of George A. Hickey.)

is that correct? A. That is correct.

Q. With respect to this matter of bidding, wasn't it [644] your position in 1950, hasn't it always been your position that bidding is less advantageous to your company than when you didn't bid?

A. Yes. We don't like bidding. We never asked for bidding.

Q. All right. So it has been your position that bidding is less advantageous to your company, isn't that correct? A. That is correct.

Q. One of the reasons that you stated that it was your position and Loew's position that bidding was less advantageous is because exhibitors can get together and divide up your pictures and divide up the other companies' pictures, isn't that correct?

A. I never said that.

Q. You never said that?

A. No, that I remember.

Q. Do you remember, Mr. Hickey, that you gave a deposition under oath in the case of Metropolitan Theatres vs. Loew's Incorporated? Do you remember doing that? A. I remember that.

Q. I want to show you pages 43 and 45 of that deposition and ask you to read pages 43 to 45 and particularly the lines from 12 to 24 on page 45. You might begin with the question at the bottom of 43 and then go over. [645]

A. (Witness examining document.)

Q. Now, Mr. Hickey, that you have read your testimony, pages 43 to 45, it is a fact that you took the position that bidding was less advantageous to

(Testimony of George A. Hickey.)

your company because the exhibitors get together and say, "I am not going to bid on this picture. You can have it." Another one will get together and say, "I am not going to bid on it. You can have it." "They all get together and the fellow that does bid gives us nothing and we are at his mercy, and then if we go out and negotiate for this, if we turn his bid down and go out and negotiate, nobody will buy it. If the distributor did that, they would put him in jail and throw the key away on him, but the exhibitor can do anything he wants to."

That is what you said in that deposition, isn't that right? A. Well, that is true.

The Court: The question is, Mr. Hickey, did you say that?

The Witness: Yes. The reason——

Mr. Corinblit: It may call for an explanation, your Honor, and if it does, all right, but I don't think it does at this point.

The Court: I don't think it needs an explanation. The only point is, did you say it?

The Witness: Yes. [646]

The Court: Mr. Corinblit, I think I should advise the jury of certain matters. There has been mentioned in this case a number of other motion picture cases. We have had mention of the Baldwin case, the Metropolitan case, the Partmar case, and some other cases.

Now, the fact that other cases have been tried in this court is of no interest to you particularly. It is true that they can use depositions or use state-

(Testimony of George A. Hickey.)

ments for the purpose of impeaching witnesses or refreshing recollection, but whether or not the plaintiff succeeded or didn't succeed in those other cases is absolutely immaterial. You are to try this case upon the evidence in this case, not upon the evidence in some other case.

You are not to concern yourself with whether in the Baldwin case or the Partmar case or some other case the plaintiff succeeded or didn't succeed. These cases are only mentioned for the purpose of identifying the cases to the witness and not for the purpose of influencing the jury in any way. So you are not to be concerned with whether or not the plaintiff recovered or did not recover in these other cases.

All right, Mr. Corinblit. [647]

Mr. Corinblit: Your Honor, do you want to explain this matter of impeachment to the jury?

The Witness: I would like to explain——

The Court: I used the word "impeachment." That is another word you may not understand.

A witness is presumed to tell the truth. It doesn't make any difference whether he is a man as high up in the industry as Mr. Hickey or just a man in the street or a bum, they are all supposed to tell the truth.

Now, if a witness makes a statement upon the witness stand, he can be impeached by showing that he made statements to the contrary to some particular other place and time.

In other words, if he says today it is black, you

(Testimony of George A. Hickey.)

might be able to show that a year ago he said it was red and that is impeachment. But it is up to you to determine whether or not the plaintiff is telling the truth and whether he is sincere and honest and above-board. You are to evaluate the testimony of each witness.

The Clerk: You said "plaintiff."

The Court: Excuse me, if I said plaintiff. I meant the witness.

Mr. Mitchell: Will you also explain the term "refreshing your recollection" because there was a question as to whether or not he recalled something and he was apparently refreshing his recollection.

The Court: Yes. That is another term we use—"refresh your recollection." I don't presume that many of you could tell me what you did on the 17th day of July, 1955. I doubt if many of you could tell me even where you were.

I am satisfied you can't tell me who you talked to or what the conversation was.

Well, if you stopped to think and maybe if you looked at some records or may if you looked at a story or maybe if you looked at a statement you made, you could refresh your recollection.

It is no disgrace to not remember. It is no disgrace to say, "I don't remember," or "I can't recall," and then some documents are shown to a witness for the purpose of refreshing his recollection and after reading the document he says, "Yes, I remember now. I didn't remember before. My recol-

(Testimony of George A. Hickey.)

lection has been refreshed. I remember now and I said so and so."

Anybody else want me to educate the jury?

All right, Mr. Corinblit.

The Witness: Now, I would like to explain that statement that I made.

Q. (By Mr. Corinblit): I would like to, if I may continue this line of questioning.

The Court: I don't think the statement [649] demands an explanation. The question only was did you say it and you said you did.

The Witness: Yes.

The Court: And that is all that is necessary.

Q. (By Mr. Corinblit): Now, Mr. Hickey, did you also state that the persons from whom you obtained the information as to this disadvantage to Fox——

The Court: Wait a minute.

Mr. Mitchell: Now, wait a minute, wait a minute.

The Court: Wait a minute. I made a mistake awhile ago when I said "plaintiff," when I meant the witness. Now, you said "disadvantage to Fox." Now, he didn't say anything about disadvantage to Fox at all.

Mr. Corinblit: I misspoke myself, your Honor. I am sorry.

The Court: All right.

Q. (By Mr. Corinblit): The persons from whom you obtained the information upon which you based

(Testimony of George A. Hickey.)

your statement that it was disadvantage to Loew's to have competitive bidding because the exhibitors would cut, would divide the pictures, included Mr. Stein of United Artists Theatre, Mr. Rosenberg and the Skouras people, isn't that correct? And in that connection, I will ask you to examine, if you like, your statement on Page 51.

(Document handed to the witness.) [650]

The Witness: Well, yes, I made that statement but I said it because of this reason. They owned the theatres there and they could be the ones as far as my knowledge of it, the only way that I would know those things is because the other people will not bid. There is only one—if there is four theatres, Mr. Rosenberg would own one and Mr. Skouras would own another and somebody else would own another one. If there was only one bid and you get that picture after picture, only one theatre bids, then you must feel, without knowing it or without being told, you must feel that there is something going on there when only one theatre bids.

Q. (By Mr. Corinblit): Well, these people came in and told you about it, didn't they?

The Court: Keep your voice up, Mr. Corinblit.

The Witness: Not that I remember they told me about it.

Q. (By Mr. Corinblit): Now, Mr. Hickey, I want you to read pages 51 and 52 and then answer that question again.

(Handing document to the witness.)

(Testimony of George A. Hickey.)

(Document handed to Mr. Mitchell.)

Q. Now, do you want to read that again, sir?

A. I haven't read this page.

Q. Yes. Now, Mr. Hickey, in that case were you asked this question: [651]

"You mentioned a moment ago in answer to my question why, certain reasons that you had for feeling that your present method of licensing motion pictures is not as advantageous as the way you used to license motion pictures, and you described what you alleged to be certain collusive activities on the part of the exhibitors.

"From whom did you get this information, that which you described?

"A. The exhibitors.

"Q. Which ones?

"A. Mr. Stein, Mr. Rosenberg, Skouras people.

"Q. Who are Skouras people?

"A. Mr. Pirosh.

"Q. All right. Who else?

"A. And the Warner Bros. sat in my office telling me that 'This is my picture and they have all agreed to give it to me, and nobody is going to bid on it but me.'

"Q. You say all of these men did, or the Warner Bros. sat in your office? "A. All of them.

"Q. When was that?

"A. Including Mr. Rosenberg.

"Q. When was that? [652]

"A. I can't remember that date.

(Testimony of George A. Hickey.)

“Q. Well, can you give me any idea whether it was ten years ago or two years ago?

“A. No, it wasn’t ten years ago. It was within the time we started to bid.

“Q. Well, how long has that been?

“A. And we have got some records in our office, because when they went out we made notes of what they said.

“Q. Can you produce those records in this deposition?

“A. I don’t know whether I can find them now or not.

“Q. Well, will you make a search for them, and if you find them produce them?

“A. Yes, I will make a search for them. But I can swear now——

“Q. Well, you are swearing to everything, you understand? “A. Yes.

“Q. You are under oath.

“A. Yes, but I am not—I am telling you now that each and every one of these men have told me personally that they were doing that. They not only did it here, but they did it all over the state, wherever there was bidding. [653]

“Q. Now, I am asking you now, where did those conversations occur? “A. In my office.”

Now, Mr. Hickey, you were asked those questions and you gave those answers, is that correct?

A. That is correct.

Q. Each question that was asked and each answer you gave was true and correct?

(Testimony of George A. Hickey.)

A. That's right.

Q. A little further on:

"Q. You can't remember the dates?

"A. Can't remember the dates——"

Mr. Mtichell: Well, he hasn't even shown this to the witness.

Mr. Corinblit: Yes, it is on page 53.

Mr. Mitchell: He hasn't denied he so testified, your Honor.

Mr. Corinblit: We haven't concluded the questioning on this.

Mr. Mitchell: Well, it isn't proper to read the deposition in this manner. I let him go on because he has not denied he testified to the facts as stated here.

The Court: Objection overruled.

Q. By Mr. Corinblit:

"Q. You can't remember the dates?

"A. Can't remember the dates.

"Q. Would you recall the names of the pictures that were involved at the time? [655]

"A. That is every picture. They get together on every picture.

"Q. Well, they have been in your office more than once?

"A. It isn't once—a dozen times."

Now, you were asked those questions and gave those answers, correct? A. Correct.

Q. When you gave those answers, it was the truth? A. I presume so.

Q. Well, you know it was the truth?

(Testimony of George A. Hickey.)

A. Yes.

Q. There are only two other matters here that I will ask you to look at, the question beginning line 23 and the answer beginning on line 2 on the next page, pages 53 and 52.

A. (Witness examining document.)

Q. Page 53, were you asked this question and did you give this answer:

“Q. Your testimony now is, as I understand it, that on every occasion that you offer a picture one or more of these gentlemen come into your office and make these statements concerning the method in which they are colluding; is that correct?

“A. Sometimes they come in and sometimes they don't. Sometimes they give it to me over the phone. We ask them why [656] they don't bid on it and they say, 'Well, I have got an agreement with so-and-so that I am not going to bid on it.' So they have agreements with each other. They will bid on our pictures when they want to and when they don't want to, they don't.”

Were you asked that question and did you give that answer? A. I did.

Q. When you gave that answer, that answer was true? A. Yes.

Q. Mr. Hickey, when you referred to the Warner Bros., the person to whom you referred was Mr. Leo Miller, isn't that correct?

I will ask you to look at page 62 of this deposition given in the Metropolitan case.

A. (Witness examining document.)

(Testimony of George A. Hickey.)

Q. The person to whom you referred was Leo Miller?
A. Leo Miller, yes.

Q. Now, Mr. Hickey, the men who in your office you testified discussed with you these agreements included Mr. Pirosh from Fox and Mr. Stein. Who was Mr. Stein in 1950?

A. Who was he?

Q. Yes, that is, he was associated with United Artists Theatres Circuit, isn't that correct?

A. Yes. [657]

Q. Mr. Pirosh who discussed this matter with you was buying in 1950 for the Fox theatres in the Inglewood area, isn't that correct?

A. That is correct.

Q. And Mr. Stein was buying not only for the first run theatre in downtown Los Angeles, but for the United Artists Theatre in Inglewood, isn't that correct?
A. That is correct.

Q. Now, despite all this, when Mr. Schreiber came in to see you and asked you to permit him to play on day and date and 7 day availability, if you wouldn't give him first run, you told him you wanted him to bid against Inglewood, is that correct?
A. That is correct.

Q. Now, you didn't tell him at that time that there were agreements that you knew about relating to the division of pictures on first run and on seven days in the Inglewood territory? You didn't tell him that? Did you say that to him at that time?

A. No. I had no occasion to say that to him.

(Testimony of George A. Hickey.)

You don't have to say that to him. They will get together. [658]

Q. Now, subsequently, Mr. Mitchell went through with you yesterday a record of bidding, so-called, beginning in May 1950, to the time that the Paradise opened and thereafter.

Now, I wish you would tell the jury, Mr. Hickey, something about this matter of the theatre business. Is it your custom when you license a theatre a picture on a run and sell on a percentage, when you are working out the deal with the exhibitor, to try to estimate in your own mind what that picture is going to gross in the theatre?

Am I clear or is that ambiguous?

A. It is not clear to me.

Q. When you negotiated with a theatre and the question is what terms are you going to try to get from that theatre, you estimate in your own mind what the gross potential of that theatre is, isn't that correct, on that particular picture?

A. That is correct.

Q. Then with that information you may decide you will try 35 per cent or 40 per cent or 30 per cent, whatever you think the picture may be worth, is that right? A. That's right.

Mr. Mitchell: This is where there is no bidding, you are talking about?

Mr. Corinblit: Yes, in negotiating. [659]

Q. (By Mr. Corinblit): As a matter of fact, in order to apply that principle, when a new thea-

(Testimony of George A. Hickey.)

tre opens you ordinarily put a picture in there to find out what it will do, isn't that correct?

A. That is correct.

Q. That is the general practice?

A. That's right.

The Court: Do you mean every one of the distributors put a picture in the theatre to find out what it does, or just one distributor?

The Witness: Well, I know that we do. You see, when a theatre opens first and we have no records or no grosses on that theatre, we generally put a picture in there on reasonable terms so we can find out what the theatre is capable of grossing.

The Court: I know that is what Metro-Goldwyn-Mayer does, but how about the rest of these distributors? They are interested in the same problem, are they not?

The Witness: Yes, I presume that if they run their business like we do, they would do the same thing, but I don't know that they do.

The Court: It is your policy to put in the first picture in these new theatres?

The Witness: We don't put them in for nothing. We put them in on a fair basis and then when we get the gross we [660] generally know after that how to figure the theatre and how to sell our pictures in there.

The Court: Now, let me ask you another question. It is clear to me, but it may not be clear to the jury. You talk about what a picture is worth, the worth of a picture. The value of a picture to

(Testimony of George A. Hickey.)

the distributor varies from locality to locality, isn't that right?

The Witness: That's right.

The Court: In other words, a picture may be worth more in Westwood than it would be in Huntington Park?

The Witness: That is true.

The Court: And you expect more revenue out of Westwood than Huntington Park.

The Witness: That is true.

Mr. Mitchell: What he has been talking about, your Honor, is non-bidding situations.

The Court: I am talking about what a picture is worth ordinarily.

Mr. Corinblit: What we are really talking about is how Mr. Hickey gets an idea as to what a picture is worth.

Mr. Mitchell: In non-bidding situations.

Mr. Corinblit: All right, in non-bidding situations.

Q. Now, Mr. Hickey, let me ask you this question, and I think I know the answer. You don't discuss with other film [661] companies how their pictures do in the theatre, do you? A. No.

Q. Never do that? A. No.

The Court: Of course, inasmuch as you have the best pictures, you expect your pictures to gross the most.

The Witness: That is true.

The Court: Why, absolutely.

Q. (By Mr. Corinblit): Mr. Hickey, I want to

(Testimony of George A. Hickey.)

show you what Mr. Mitchell showed you yesterday, the bidding record on the picture *A Life of Her Own*, September 25, 1950. You notice that the Paradise put in a bid of 14 days 40 per cent of gross, and you rejected that bid and took another bid; that is correct, isn't it?

A. That is correct.

Q. Now, Mr. Hickey, it is a fact, is it not, that when you rejected that 40 per cent bid, you had not followed your customary practice of permitting a picture to be played in the Paradise, you never permitted a picture to be played in the Paradise, and you didn't have the remotest idea what the gross of that picture could possibly be in the Paradise?

Mr. Mitchell: We will object to that on the ground it assumes a fact not in evidence. If there is any evidence, it is only a custom to try out the theatre. You can't try out a theatre in a bidding situation, and that is why I was so particular [662] to make certain to make it clear that those answers were all about non-bidding situations. He has now twisted a non-bidding situation into a bidding situation and assumed Mr. Hickey was talking about a bidding situation when he was talking about a non bidding situation, and therefore the question assumes facts not in evidence. [663]

The Court: I am going to sustain the objection.

Change your question, because I think the fact is that, at the time the bid was refused, there was no Metro-Goldwyn-Mayer picture played in the theatre,

(Testimony of George A. Hickey.)

and Mr. Hickey didn't know what the gross was going to be. I think he can answer it that far.

Mr. Corinblit: Yes.

The Court: Regardless of whether there was bidding or no bidding.

Q. (By Mr. Corinblit): Would you answer that question, Mr. Hickey?

Mr. Corinblit: I wonder if you would read it back.

The Court: Let me rephrase the question.

At the time you turned down that particular bid no Metro-Goldwyn-Mayer picture had been played in the Paradise Theatre, and you did not know what the gross would be in the Paradise Theatre?

Mr. Mitchell: Your Honor, is your Honor's question limited to seven days or to other availability?

The Court: Well, at the time the bid was turned down no Metro-Goldwyn-Mayer picture had been played, and if Mr. Hickey didn't pay any attention to the grosses of the other pictures, then he had no knowledge as to the grosses might be under any circumstance.

That is true, is it not, Mr. Hickey? [664]

The Witness: Yes. You see, when we put a picture out on the market we generally know whether it is going to be a big grosser or a small one. Now, in this particular situation here we turned down the bid simply because we knew, without even having a picture in the Paradise Theatre, that the picture couldn't gross what we were offered as a guarantee for the picture in the Academy Theatre.

(Testimony of George A. Hickey.)

I would like to look at that again, if you please.

The Court: What was the name of that picture?

Mr. Corinblit: Life of Her Own.

The Court: Was that one of your better pictures?

The Witness: Yes, sir, it was a very good picture, and the Academy Theatre grossed, or, offered us \$4,025 as a guarantee, plus 70 per cent in excess of \$10,000, less the cost of the second feature.

Now, that "less the cost of the second feature" means that if they pay \$300 or \$500, that is taken out of the gross for the second picture.

Now, the Paradise Theatre offered us 14 days at 40 per cent of the gross, less the cost of a second feature.

Now, the experience that I have had, being distributing pictures for 31 years with this company, I don't have to—I don't have to guess and I don't have to know too much to know that when I get a guarantee of \$4,025 from the Fox Theatre, plus 70 per cent of their entire gross in excess of [665] \$10,500, I don't have to think much to know that it is going to do more than the Paradise Theatre, because I know—I would be willing to bet on it—I know that it is going to do more. I know that I am going to get more money, and that is the reason I accepted that bid.

I couldn't afford to accept this bid. Here is a bid from the United Artists for 14 days, same picture, \$2,750 guarantee against the first week, 40 per cent to \$5,050 the second; 60 per cent less 21½ for a double bill deduction; and the second week 35

(Testimony of George A. Hickey.)

per cent to \$4,250, and then 60 per cent less 2½ for double bill deduction.

I didn't take the United Artists bid, which is also a better bid than this bid here in the Paradise. That is a better bid in the United Artists Theatre, but I passed that and took the Academy bid because I know it is a better bid. I know I can earn more money. I know I can in the United Artists or the Paradise Theatre—I know I can earn more money than I can in the Paradise Theatre, and that is the reason I took the bid.

Q. (By Mr. Corinblit): Mr. Hickey, have you also observed in your experience that a theatre, after it is established on a run——

Mr. Corinblit: Let me withdraw that.

Q. In your experience, is it that the theatres would like to get a steady flow of pictures on the run on which [666] they are playing?

A. Would like to get what?

Q. A steady flow of pictures on the run which they are playing—that is, they like seven days regularly if they are playing seven days, or 14 days, whatever run they are playing, they like to get a steady flow?

A. Yes. They like to get a steady flow in Hollywood, in the showcase run. That is why I wanted a steady run there. I didn't want to be jumping around.

Q. And the reason that the exhibitors like a steady flow is because their theatres get established

(Testimony of George A. Hickey.)

in that position, and Loew's and your company are agreeable to that, isn't that right?

A. It is agreeable to it if we have a theatre that we can make money in.

Q. Now, the reason that a theatre wants to get established on that run is because, once it is established, people customarily go to the theatre regularly because they know the pictures are coming in on a 7-day availability, and their grosses can build up, isn't that right?

A. If you have good pictures.

Q. Now, Metro-Goldwyn-Mayer made it impossible, as well as the other companies, but Metro-Goldwyn-Mayer made it impossible for the Paradise Theatre ever to develop its potential because you refused to put a single picture into that [667] theatre, even on an experimental basis, isn't that correct, for the first three months of its operation?

A. We don't put pictures in a theatre on an experimental basis.

Q. I thought you testified——

Mr. Johnston: Let him finish his answer.

The Witness: We put them in on certain terms to get an idea of what the theatre can do, but we don't put them in for fun—we don't put them in for nothing.

Q. (By Mr. Corinblit): You didn't even do that in the Paradise, did you, on any terms?

A. Because they wouldn't buy them and they wouldn't bid on them when we gave them a chance

(Testimony of George A. Hickey.)

to bid, and they don't bid now and they don't play our pictures now.

Mr. Corinblit: I notice it is 12 o'clock, your Honor.

The Witness: Our pictures are too expensive for the Paradise, so the gentleman says. He can't afford them.

What are we going to do? Just because he can't afford them, are we going to lay them on the shelf?

We made a picture that cost three and a half million dollars, Kismet.

We made another one costing three million dollars, Diane.

He didn't run either one of them, to my knowledge.

Mr. Corinblit: All right. I think this might be a good place for a break, your Honor. [668]

The Court: Ladies and gentlemen of the jury, we are about to take another recess and again it is my duty to admonish you you are not to discuss this case with anyone, you are not to permit anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until the case has finally been submitted to you.

With that admonition, the court is now in recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:00 o'clock noon, a recess was had until 2:00 o'clock p.m. of the same day.) [669]

Tuesday, July 17, 1956, 2:00 P. M.

(The following proceedings were had in

chambers, outside the hearing and presence of the jury):

The Court: In regard to Plaintiff's Exhibit 6-M, I have ordered Mr. Corinblit not to read the first sentence in paragraph 3.

In regard to Plaintiff's Exhibit 6-P, I have ordered Mr. Corinblit not to read or give to the jury the first sentence in the second paragraph.

Mr. Corinblit: And the Plaintiff takes an exception.

The Court: And the plaintiff takes an exception.

(The following proceedings were had in the hearing and presence of the jury):

The Court: Stipulate the jury is present in the box?

Mr. Mitchell: So stipulated.

Mr. Corinblit: So stipulated.

The Court: You may proceed.

GEORGE A. HICKEY

the witness on the stand at the time of the recess, having been previously duly sworn, was examined and testified further as follows: [670]

Redirect Examination—(Continued)

Q. (By Mr. Corinblit): Now, Mr. Hickey, when you refused to permit the Paradise Theatre to play on a 7 day availability on a day and date basis, there was some correspondence between the plaintiff and yourself, and I would like to read some of this correspondence.

Mr. Corinblit: I will first offer in evidence the

(Testimony of George A. Hickey.)

portions of Plaintiff's Exhibit 6-M which the court has admitted. May I read those to the jury?

The Court: You'd better get your record on it first. It may be admitted in evidence.

The Clerk: 6-M.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 6-M.)

* * * * *

The Court: Mr. Corinblit, it says the Academy was five miles away. Where was the Academy located, and which Academy are you referring to?

Mr. Corinblit: The Academy, your Honor, is located here where I have the pointer.

The Court: Is that in Inglewood?

Mr. Corinblit: Yes. That would be this section of Inglewood here (indicating).

The Court: May I inquire, is it agreed that the Academy is approximately five miles distant from the Paradise?

Mr. Mitchell: We had a stipulation it was four and four-tenths miles distant.

The Court: Four and four-tenths.

Mr. Corinblit: I have four and five-tenths on my sheet.

Mr. Mitchell: I won't argue over the one-tenth, your Honor. The first stipulation was four and four-tenths, but I will gladly modify the stipulation to four and five-tenths. One-tenth of a mile one way or the other doesn't make any difference.

Mr. Corinblit: I don't recall any stipulation but four and five-tenths is what is provided by the de-

(Testimony of George A. Hickey.)

pendants and we will stipulate it is four and five-tenths miles.

The Court: I might say to the jury that at the conclusion of the evidence in this case I will give you some instructions on the law that is applicable to the case, and I will probably [675] give you an instruction on the question of substantial competition.

Now, I will instruct you at the proper time that no distributor can prefer one theatre over another, ordinarily, if they are not in substantial competition.

In other words, a theatre in Santa Barbara and a theatre in San Diego should be treated exactly alike because there is no competition. But if you have a theatre where there is substantial competition between the two, it is impossible to show the same picture in the two theatres at the same time, and consequently one has to be given preference over the other.

And so when you give one preference over the other on the theory that it is in substantial competition, it is perfectly legitimate, but if they are not in substantial competition then it is not legitimate and that is why they are stressing this question of substantial competition.

Mr. Corinblit: Regarding part of your statement, your Honor, I would like to ask the witness to restate once again——

Q. I think, Mr. Hickey, you stated that the

(Testimony of George A. Hickey.)

theatres in Hollywood and the theatres in downtown were in substantial competition, is that right?

The Court: He said they were in substantial competition on first run. [676]

Mr. Corinblit: Yes, on first run.

Q. Is that correct? A. Yes.

Q. And they played simultaneously first run, didn't they? A. That is true.

Q. You take the position that the theatres in Hollywood were in substantial competition with the Paradise Theatre, is that right?

The Court: On first run.

Mr. Corinblit: First run.

The Witness: That is correct.

Mr. Corinblit: Now, the reason, of course, in your Honor's statement with reference to first run, they are in substantial competition and in the Los Angeles area they were permitted to play simultaneously.

Mr. Mitchell: The company owns the pictures and they can play them wherever they want to unless they conspire. I guess they can sell San Diego one week and Santa Barbara a year later if they want to, if they do it without conspiracy with anybody.

The Court: That is true.

Mr. Corinblit: As a matter of fact, Mr. Hickey, when you went to—I will withdraw that.

Q. It is true, as a matter of fact, not only on first [677] run but on 21 days, you had theatres in this area that I am describing here, that played

(Testimony of George A. Hickey.)

day and date which you consider to be in substantial competition on 21 days? A. 21 days?

Q. Yes, that is, for example, between the Loma Theatre on Santa Monica and the Egyptian or the Hollywood Theatre on Hollywood Boulevard, or the Larchmont Theatre, for example, or the Fairfax Theatre. A number of those were in substantial competition—they are quite close together.

A. Well, it all depends on how close to each other they are and what availability and clearance they are running under.

Q. I am talking about the 21-day run.

A. Well, the 21-day run—you mean to downtown or Hollywood?

Q. To each other—that is the Hollywood Theatre, for example, in Hollywood, and the Loma Theatre on Santa Monica and the Larchmont Theatre on Highland—those three theatres, wouldn't you say, were in substantial competition?

A. I don't think on a 21-day run that anyone would go from Hollywood to the theatre out in the Inglewood area.

Q. No.

A. And I don't think they would go—I do think that a certain percentage would go from the Inglewood area to a Hollywood first run, and that is why it makes them in [678] substantial competition on first run.

Q. I am now talking about 21 days in this area, in the Hollywood area.

Mr. Mitchell: That is immaterial, what happens

(Testimony of George A. Hickey.)

in the Hollywood area 21 days. That is remote from this lawsuit.

The Court: Let me ask the witness a question. Mr. Hickey, it is your opinion, is it not, that theatres may be in substantial competition on first run and not in substantial competition on second run?

The Witness: That is right.

The Court: Or a third run?

The Witness: That is right.

The Court: In other words, this question of substantial competition varies with the run.

The Witness: That is right. They would if it is first run—there would be a certain percentage as I said before, going from the Inglewood area to Hollywood or downtown, whichever they chose, but they wouldn't do that on a 21-day run. So that makes the first run substantial competition but it wouldn't make the 21-day substantial competition.

Q. (By Mr. Corinblit): I appreciate that answer, sir, and I am now asking another question. Even on the 21-day run in the City of Los Angeles, you customarily permitted theatres which were in substantial competition to play simultaneously with each other in this area that I am outlining? [679]

Mr. Mitchell: In this area he is outlining is in Hollywood, and I object to it on the ground it is remote. It has nothing to do with the lawsuit. No 21-day run in Hollywood involved in this lawsuit.

The Court: Just a minute. The objection is overruled.

I noticed some years ago when I was more interested in going to motion pictures than I am now

(Testimony of George A. Hickey.)

—I was considerably younger then. I used to watch the advertisements, and I noticed that in many of the Fox theatres they played the same picture although the theatres might be within a mile or two of each other. That is, they were in substantial competition, I suppose, because of their closeness, and yet they were playing the same picture.

The Witness: Not first run.

The Court: Do you do that at MGM—did MGM play the same picture on the same run?

The Witness: On a later run.

The Court: On the later runs?

The Witness: Yes, sir, never on the first run.

The Court: Never on the first run?

The Witness: No. [680]

Q. (By Mr. Corinblit): Now, I take it you would testify Hollywood and downtown were in substantial competition. A. First run.

Q. On first run, and on first run you permitted theatres to play day and date with each other which were in substantial competition with each other?

The Court: When, Mr. Corinblit?

Mr. Corinblit: During the entire period from 1945 up to now, your Honor.

Q. In other words, you permitted the Los Angeles and the Loew's State to play day and date with each other? A. I beg your pardon. We didn't.

Q. I beg your pardon. I am sorry. I meant the Egyptian Theatre and the Loew's State.

A. The Egyptian Theatre in Hollywood and the Loew's State.

(Testimony of George A. Hickey.)

Q. Played day and date with each other.

A. Played day and date with each other.

Q. And those two theatres were in substantial competition, one in Hollywood and one downtown, on first run?

A. They were only in substantial competition in this way. As I repeated many times in every case, including this one, there is a certain number of people that will go to downtown that won't go to Hollywood from every area, and there is a certain number of people that will go to Hollywood that will [681] not go downtown in every area. There is a few that might go downtown if they have some shopping to do. They might go down to shop and they might go to a theatre downtown, and the same thing would happen in Hollywood.

Q. Then to answer the question directly, and I think you have answered it before, but I just want to make sure, the Egyptian and the Loew's State when they played first run pictures were in substantial competition?

A. I would say there is nobody in Hollywood that would leave Hollywood to go downtown. There is nobody downtown that would leave downtown to go to Hollywood.

Q. Then is it your answer that they were not in substantial competition?

A. Well, it is and it isn't. It is too far away to be substantial competition.

Q. That is, it is too far between Hollywood and downtown to be substantial competition?

(Testimony of George A. Hickey.)

A. Yes. It is too far away and they have different areas to draw from.

Q. All right.

A. Downtown would draw from Pasadena. Hollywood would not.

Downtown would draw from Glendale. Most people would go down—well, there might be a division in Glendale. Some of them might go to Hollywood. Some of them might go downtown. [682]

Q. Is this correct, that your statement is that Hollywood and downtown were not in substantial competition?

Mr. Mitchell: He just said they are and they aren't, your Honor. It is not that simple. He has just answered that question. I object to it on the ground it is asked and answered.

The Court: I am wondering this. We have got a witness here who has 30 odd years in the motion picture business, and he says they are and they aren't in substantial competition.

We have got a jury here that never heard of the distribution problems of the motion picture industry until last week. How can they answer this question of whether theatres are in substantial competition after being educated for 20 or 30 days, if we have got a witness with 30 some years who can't answer the question, are they or are they not?

He said they were, and he said they were two or three different times. Now are you trying to get him to say they weren't?

(Testimony of George A. Hickey.)

Mr. Corinblit: No, sir. I want to make sure what the answer was.

The Court: He has told you a half dozen times in his opinion the theatres in downtown Los Angeles and Hollywood were in substantial competition.

Mr. Corinblit: All right.

Q. On August 31, Mr. Hickey, you wrote Mr. Marco Wolff a letter——

The Court: Mr. Corinblit, when you say August 31st, it doesn't mean anything. Complete the date.

Mr. Corinblit: Yes, sir.

Q. On August 31, 1950, you wrote Mr. Marco Wolff a letter. I don't recall whether the defendants have offered it in evidence. It is Plaintiff's Exhibit 6-O. I would like to offer that in evidence at this time.

The Court: It may be received.

Mr. Mitchell: That is already in evidence, I believe. Loew's D-3, unless you want to have two exhibits with the same number.

Mr. Corinblit: I think we ought to have it in as a plaintiff's exhibit, your Honor.

The Court: All right, 6-O may be admitted in evidence.

The Clerk: 6-O.

(The exhibit referred was received in evidence and marked as Plaintiff's Exhibit 6-O.)

Mr. Johnston: Is it my understanding that this exhibit is already in evidence?

Mr. Mitchell: That's right. [684]

* * * * *

(Testimony of George A. Hickey.)

Mr. Corinblit: I would next like to offer in evidence the portions of Exhibit 6-P, except those that have been excluded, and read that to the jury, if I may. I will offer in evidence 6-P.

The Court: It may be admitted in evidence, that is, all except the excluded part.

The Clerk: 6-P.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 6-P.)

* * * * *

The Witness: May I answer that?

Q. (By Mr. Corinblit): Yes, sir, there will be questions which will give you that opportunity in a moment, if I may.

Now, it is a fact, is it not, that you told Mr. Schreiber and Mr. Wolff, for that matter, when you refused to permit them to play 7 days day and date with Inglewood, that is simultaneously with Inglewood, when you told them that, the reason that you gave to them at the time was substantial competition between the Academy and the Paradise, is that correct? That is the reason you gave, substantial competition?

A. Well, they are in substantial competition, but they were bidding in Inglewood at the time, and I told him he could also bid, if he wanted the 7 day run.

Q. But my question is when you refused to permit the Paradise Theatre to play on a 7 day availability day and date with the Academy, that is at the same time as the Academy, the reason that you

(Testimony of George A. Hickey.)

gave to Mr. Schreiber and to Mr. Wolff was that the two theatres are in substantial competition? That is the reason you gave them, is that correct?

A. No, I don't think it was. I think the reason I gave them is because all theatres in Inglewood was in substantial competition with the Paradise and they were bidding, and if he wanted that privilege we would be very happy to give it to him, [688] which we did.

The Court: Let's consider the Inglewood situation for a moment, the theatres in Inglewood, and let's consider a theatre outside of Inglewood that was not in substantial competition with Inglewood. Would you require such a theatre to bid against Inglewood?

The Witness: Not if it was not in the same area, your Honor.

The Court: So you only required bidding where there were theatres in substantial competition.

The Witness: That is correct, the same area.

The Court: Then it is your opinion that the Paradise was in substantial competition with Inglewood?

The Witness: Definitely.

The Court: And that is why you required a bid?

The Witness: That is so.

Mr. Corinblit: I think you have had the question answered, your Honor, that I was looking to.

Q. I think we ought to explain to the jury the result of not permitting the Paradise to play simultaneously. It is true in the motion picture industry,

(Testimony of George A. Hickey.)

isn't it, Mr. Hickey, when you sell pictures to a first run theatre, you get more money than you get from a second run theatre, ordinarily?

A. Generally speaking, yes.

Q. When you sell pictures to a theatre on an early [689] availability, you get more money than when you sell pictures to a theatre on a later availability, generally speaking?

A. Well, it doesn't always happen that way.

Q. I know it doesn't always happen, but I am asking whether it is generally true.

A. Well, I could give you a long story on that. If we were using the two show cases, as we were for some time, and we had the time and the proper theatres to run it and advertise it properly, the theatres running after them would do a tremendous business because of the advertising that we would give them in the show cases.

Since we went into the multiple runs, we take pictures cold and we put them in 11 theatres at one time. The picture comes and goes before anybody knows anything about it, and the picture—the theatres that run after that will sometimes do a lot more business than some of the theatres in the multiple run. [690]

Q. Now, if you could, without regard to that example you have given, if you—if it is not possible to state the answer generally, well, then, we can't get it.

A. I just can't hear you.

Q. The question is, Mr. Hickey, whether generally when you sell a picture you, in your opinion,

(Testimony of George A. Hickey.)

try to get more money from a theatre on an earlier availability than you get from a theatre on a later availability. Just answer that simple question.

A. Yes, that is true.

Q. All right. Now, similarly——

A. It all depends on the theatre and the seating capacity, and what kind of theatre it is, of course.

Q. Yes, I appreciate that. Now, similarly, the reason you try to get more money is that the later availability ordinarily is of less value, or I will put it this way, the earlier availability is more valuable to a theatre in terms of getting more gross into the theatre than the later availability, isn't that correct?

A. No, it is not correct.

Q. Well, as a general matter?

A. No, no. I wouldn't say that. On buying a picture—you take for instance we just run a picture in the Paramount Theatre downtown, we run the picture for six weeks. It was *Meet Me in Las Vegas*. The picture didn't do [691] the business that we thought it was going to do and we spent a great deal of money advertising it.

One of the reasons that it didn't do the business that we thought it was going to do was because we didn't have a Hollywood run—we didn't have a Hollywood theatre to put this in as an exclusive run. We put it out for bids and it so happened that Paramount Theatre downtown had the best bid.

I was sorry they got the picture but they had the best bid so we had to give it to them, because downtown is not a good place for amusement and the

(Testimony of George A. Hickey.)

Paramount Theatre is not too good anyway because of the location.

Now, the picture didn't do what we thought it was going to do and we were a little afraid of it. But when that picture got out in the territory the word of mouth advertising gave that picture a great boost and we done tremendous business in the territory, in all runs, and we are still doing it on that picture.

Q. Well, a few moments ago I understood you to testify that you try to get more money from a theatre with an earlier availability than from a theatre on a later availability? A. We do——

Q. And the reason for that is, ordinarily, you expect that a theatre on an earlier availability will gross more than a theatre on a later availability?

A. Yes, but I did say it didn't always prove out that way.

Q. Right. I appreciate the exceptions. The point is, I am talking generally. Generally it is true.

Now, it is also true from a point of view of a theatre, for the same reason a theatre man who is on a late availability, when he moves up to an earlier availability because he is getting something more valuable, will ordinarily pay you more film rental, ordinarily, subject to exceptions?

A. Well, that is good to listen to but it don't work out that way. You know there are a lot of people — they don't understand our business. They would think you are right if they heard you but you are not right. You are wrong in many cases. When

(Testimony of George A. Hickey.)

we move up a clearance in some theatres they do less business than they did when they—if we move up, for instance, a theatre from 21 days to 14 days, a great many times that theatre does less business than they did on the 21-day run.

The Court: Mr. Hickey, isn't that primarily because they charge more money on a 14-day run than they do on a 21-day run? Doesn't that have something to do with it, the price of admission?

The Witness: Well, the price of admissions—some theatres charge 85 cents. Other theatres charge 50 cents. 60 cents. There are a lot of theatres. For instance, the [693] Baldwin Theatre. They went to a 50-cent run. Their admission is 50 cents.

The Court: What run was that?

The Witness: That was, I believe, a 21-day run, if I am not mistaken. I think it was a 21-day run.

Well, they did a lot more business at 50 cents than other theatres in the same run. They did a lot more business than some of the theatres that run it 14 days but that was on account of their admission price.

Q. (By Mr. Corinblit): All right. Now, without regard to the admission price, however, isn't it generally accepted in the business that just as you, as a distributor, try to get more money from an earlier availability than you get from a later availability, a theatre man ordinarily has got something more valuable which he has by reason of an earlier availability as distinguished from a later availability?

A. Sometimes he has.

(Testimony of George A. Hickey.)

Q. As a general matter?

A. Sometimes he has and sometimes he don't. Not generally speaking, no.

Q. You can't say one way or the other?

A. Yes, I can, because I have an experience that teaches me that sometimes those in the 21-day run is liable to get more money on a picture like *Meet Me in Las Vegas*, [694] for instance. They will do more on the 21-day run than the first run and the second run and the third run.

Q. Mr. Hickey, you are familiar with, aren't you, the Westchester area. There are two theatres, the Loyola Theatre and the Paradise Theatre?

A. That is true.

Q. Now, don't you know that the Loyola Theatre playing on first run grossed probably twice or three times—twice as much as the Westchester—as the Paradise Theatre playing on a later run?

A. Well, most any theatre out there would gross more than the Paradise Theatre.

The Court: Most any theatre?

The Witness: Most any theatre in the Inglewood area would gross more than the Paradise Theatre.

The Court: Why?

The Witness: Well, I told Mr.—I told the gentleman that owns the Paradise Theatre one day—I didn't hesitate a bit to tell him what I thought about it.

He has a bowling alley in that theatre. He built a theatre with a bowling alley in it, and I told him if he paid as much attention to the theatre as he did

(Testimony of George A. Hickey.)

the bowling alley, the theatre would do more business. I told him that one day in my office. And I don't think they give the theatre the right kind of attention. [695]

The Court: Then it is a management problem.

The Witness: I think so. Well, you see, your Honor, we have a lot of difficulties sometimes with theatres.

I have known—I have complained to the owners of circuits that the manager in such and such a theatre wasn't a good manager; he was costing us a lot of money. He wasn't running the theatre properly. He wasn't taking care of the patrons going to that theatre. And that cost us a lot of money.

There are a lot of things in our business that people don't understand and sometimes I get confused myself. I don't understand them.

It is really heartbreaking to see the way some of the pictures are run.

We make pictures, big pictures, and if the picture is a hit in a theatre, they do a great business, the manager goes around in the theatre and pats himself on the shoulder and says, "I am a great manager, I did a great business."

Well, he don't say anything about us making a great picture, but if the picture flops and it don't do any business then he says the studio doesn't know how to make pictures.

"Why don't you do this and that." We have all kinds of trouble with the managers.

Q. (By Mr. Corinblit): Mr. Hickey, I would

(Testimony of George A. Hickey.)

like to ask you just one or two questions about this fact I think [696] you have mentioned now for the first time.

Did I understand the reason you didn't sell the Paradise first run or 7 days was because you had a complaint about the management?

A. No, that isn't the reason.

Mr. Mitchell: There isn't any such evidence that they refused 7 days. They always made 7 days available to him, and I object to the question on the ground it assumes a fact not in evidence.

The Court: They made 7-day availability on bidding.

Mr. Mitchell: That is correct.

The Court: Don't forget the bidding part of it.

Mr. Mitchell: Absolutely not.

Mr. Corinblit: I would like to have the question answered, if I may, your Honor.

The Witness: I said no.

Mr. Mitchell: That requires him to answer something not in the record.

The Court: The witness said he answered the question and the answer was no. He apparently understood the question.

Q. (By Mr. Corinblit): And the reason you gave that answer was because you refused to permit first run or 7 days day and date even before that theatre opened and you hadn't the remotest idea about the management, isn't that right?

A. We never make any deals with anybody before a theatre [697] is built and opened. Who could

(Testimony of George A. Hickey.)

I make a deal with? If the theatre is not built, the theatre is not open, who are you going to make a deal with? The ground?

Q. In fact, when the theatre was constructed and ready for opening and when they asked you for first run or for 7 days, you turned it down again without—— A. Definitely.

Q. Without having the remotest idea about the management of the theatre, isn't that right?

A. That is true. What he should have done and what I wanted him to do was to bid for the pictures so we could get a slant on his house, so we would know what he was capable of grossing.

And you spoke about the Loyola Theatre, pictures running in the Loyola Theatre.

Metro-Goldwyn-Mayer pictures do not run in the Loyola Theatre and did not run in the Loyola Theatre. We had a couple of pictures that were problem pictures that nobody in the city wanted. We couldn't sell them anywhere.

So we were glad to get the Loyola Theatre to run them and they run both pictures together on a double bill.

I have four pictures now that nobody wants, and I would be glad if the Paradise Theatre would take the pictures on their first run in the city and run them double bill, but the Paradise don't want them. So, what am I going to do? [698] I can't do anything because I have no place to put them.

Q. (By Mr. Corinblit): Mr. Hickey, I think

(Testimony of George A. Hickey.)

just a moment ago you said that the Loyola does not run Metro-Goldwyn-Mayer pictures.

A. That is true.

Q. The picture Blackboard Jungle played in the Loyola Theatre?

A. That is one picture and these other two pictures, but they bid for it and they are in the same area that the Paradise Theatre is in and that the other theatres in Inglewood is in. It is in that area and everyone in that area had a chance to bid for it. They got it and they run it.

Paradise had the same chance. They were asked to bid at the same time with the Loyola. We don't discriminate. We have nothing to hide, nothing at all.

Q. Mr. Hickey, when you refused to permit the Paradise—when you refused to permit the Paradise Theatre in 1950 to play day and date with the Academy, in fact, you knew that if the Paradise instead of playing on 21 days could play on 7 days, it would receive a larger gross in its theatre, isn't that correct?

A. Well, it might. I don't think there is any doubt about that.

Mr. Mitchell: Wait a minute. Don't interrupt him. [699] What did you say?

The Witness: It might because there would be nobody else in the area running it if they got it.

Q. (By Mr. Corinblit): And if they got a larger gross and you were charging 40 per cent or 35 per cent for your pictures, you would have gotten that

(Testimony of George A. Hickey.)

additional revenue from the Paradise, isn't that right?

A. That is right. Why don't he bid for them and do it?

Q. Now, therefore, when you denied the Paradise the right in 1950, to play on an equal availability with the Academy——

A. I didn't deny them——

Q. On an equal availability—I am talking about playing day and date.

A. Equal availability. I told him he could bid.

Q. My question is, when you refused to permit the Paradise to play day and date with the Academy you were actually refusing to take—you were actually making a decision which was against the best interests of your company, isn't that correct?

A. No, it wasn't. I never do anything against the best interests of my company. If I had played—if I played two theatres that are substantially competitive like the Inglewood and the Academy Theatre, and we will just take a picture—— [700]

Mr. Mitchell: You mean the Inglewood and the Academy?

The Witness: The Paradise. Pardon me. The Academy and the Paradise.

We will just take a figure and say if the picture was played alone in the Academy Theatre, it would do \$10,000. I venture to say, due to the fact that these two theatres are in substantial competition, that it would split that gross in two for each one of those theatres. Some of them would go to the Para-

(Testimony of George A. Hickey.)

dise and some of them would go to the Academy. How many would go to each theatre, I don't know, but it would put each theatre in the red. Neither one of the theatres would make money, and we would be fighting two overheads instead of one. I am not silly enough to make that kind of a decision, and if I was, I wouldn't be with this company for 31 years.

Q. (By Mr. Corinblit): Mr. Hickey, you have stated now, I believe, an opinion that if the Academy Theatre and this—I take it you have stated what was your opinion, that if the Academy Theatre had grossed \$10,000 a week, and then you had permitted the Paradise Theatre to play simultaneously, that they would have split the gross so that there would have been a gross of \$5,000 a week in the Academy and \$5,000 a week in the Paradise.

A. I didn't say \$5,000 a week in each one. I said they would split it. How much each one would take would depend on [701] how much the other would do. I couldn't say exactly, but they would split the \$10,000.

Q. Now, converting that into people, is it also your opinion that if there were 10,000 people a week that went to the Academy and then the Paradise played simultaneously, that the two theatres would split the patrons, is that correct?

A. Well, they would split—some would go to the Academy and some would go to the Paradise. How many, I couldn't tell you that. I am not smart enough for that.

(Testimony of George A. Hickey.)

Q. As a matter of fact, did you have any opinion as to whether it would be as little as 50 people?

A. I wouldn't say. I wouldn't attempt to say that.

Q. You couldn't say whether it was 50 or 100 or 150 or 200, could you?

A. No, but I would say this, that the people close to the Paradise, living close to the Paradise Theatre on both sides, whether it would be in Inglewood or Los Angeles, would probably go to the Paradise.

Those that lived close to the Academy would probably go to the Academy. But there is a lot of people that prefer a certain theatre. They like to see pictures in a certain theatre. Those people would go to the theatre they liked the best, but the patronage would be divided.

Q. Now, you wouldn't say that if the patronage was divided so that the Academy only lost 50 people, that in that [702] situation the Paradise and the Academy were in substantial competition, would you?

The Court: What is substantial competition? We had one witness here who said 20 per cent was substantial competition. I don't know what substantial competition is. Substantial competition in my mind depends a great deal upon the proximity of the theatres. If they are close together, they are in substantial competition. If they are five miles away, I don't know whether five miles is substantial competition or not.

(Testimony of George A. Hickey.)

Mr. Corinblit: Your Honor, there is a very simple way to check, and that is why we have read the letter into evidence, that is to say, if you have a theatre which is grossing \$10,000 a week, as Mr. Hickey says, and you play another theatre simultaneously, and the gross is not affected substantially of the theatre playing the exclusive, then you have some pretty good evidence whether those two theatres are in substantial competition. That is why I am asking Mr. Hickey whether or not if the gross was only affected to the tune of 50 people, whether it would be substantially competitive.

The Court: You asked Mr. Hickey whether they ever did try to determine whether or not there was substantial competition by the trial and error method. He said they were in substantial competition. [703]

I might say to the jury this is a question for you to decide. You don't have to take the testimony of any witness. You don't have to believe Mr. Hickey or you don't have to disbelieve him. You don't have to believe the testimony of any witnesses. You don't have to take my definition. You are the ones who are going to decide whether or not these theatres are in substantial competition.

Mr. Corinblit: I think, your Honor, I have no further questions.

The Court: Well, I suppose you will have a considerable number of questions?

Mr. Mitchell: There will be more than 10 minutes.

(Testimony of George A. Hickey.)

The Court: Maybe we better take our recess now.

Mr. Mitchell: I think it would be well.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, you are not to formulate or express any opinion as to the rights of the parties until this case is finally submitted to you.

With that admonition, we will now recess until 10 minutes after 3:00.

(Recess.) [704]

The Court: Is it stipulated the jury are present and in the jury box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Westbrook: Yes, your Honor.

The Court: You may proceed.

Mr. Corinblit: Your Honor, I am a little uncertain as to where we are.

This witness was called on cross examination and we have had redirect and this was recross. Is this re-recross that we are about to go into?

The Court: I don't know. I don't know, but I think maybe you opened up some avenues of approach that Mr. Mitchell hadn't anticipated you were going to, so I think he has a right to explore those avenues according to his own desires and wishes.

I will permit it, Mr. Mitchell.

Mr. Mitchell: Thank you.

(Testimony of George A. Hickey.)

Recross Examination

Q. (By Mr. Mitchell): You said that at times you were suspicious and at other times you learned that exhibitors were dividing up the product of the various distributors among themselves.

What would make you suspicious that the exhibitors were dividing up the various distributors' product? [705]

A. Well, when you get—when you put out bids and you only get one bid in an area, then you get a little suspicious and you figure that there is something going on in the way of dividing up our product.

Q. All right. Now, Mr. Corinblit asked you some questions about the Inglewood 7-day run in late January 1950, and in February 1950, and he pointed out to you that United Artists Theatre in Inglewood was the only bidder on these pictures in those two months, Loew's pictures—Tension, That Forsyte Woman, Malaya, East Side, West Side and Ambush. Did that make you suspicious with respect to any division of product at that time?

A. In the United Artists?

Q. Yes. A. Yes.

Q. Because why?

A. Because they were the only one that bid on them.

Q. All right. Now, I went over with you an exhibit which had been prepared under your direction, Loew's Exhibit K-1, as to the Loew's play of its 7-day run in Inglewood from May 1, 1950 to Sep-

(Testimony of George A. Hickey.)

tember 18, 1951, and commencing with the picture The Big Hangover, which was offered by Loew's on May 9, 1950, this exhibit shows as you recall, that the La Tijera and the Academy bid for that picture; for the next picture the La Tijera and Fifth Avenue and United [706] Artists bid; for the next picture the La Tijera, United Artists and Academy bid.

The next picture the La Tijera, the United Artists and Fifth Avenue bid.

The next picture the La Tijera, United Artists and Academy.

The next picture the La Tijera, United Artists, Fifth Avenue and Academy and so on.

Now, does that kind of bidding indicate anything to you as to whether or not there was at that time a division of product?

Mr. Corinblit: Your Honor,——

The Witness: No.

Mr. Corinblit: I object to that as calling for a conclusion of the witness.

The Court: Objection overruled.

Q. (By Mr. Mitchell): What was your answer?

A. No, it didn't. It proved to me that there was no agreement among them then of any division of product because the Academy would get one picture and the next time the La Tijera would get another and then the Fifth Avenue would get another and so on. So, there couldn't be any division between them then and it proved to me that there was none at that time. [707]

(Testimony of George A. Hickey.)

Q. All right. Now, let's turn to the time when the Paradise opened. Loew's Exhibit K-1 shows that the picture *Life of Her Own* was offered by Loew's on September 11, 1950; that the Paradise, La Tijera, United Artists and Academy bid.

Then *Toast of New Orleans*, that the United Artists and Fifth Avenue bid.

Then *Right Cross*, and that the United Artists and Fox bid.

Then the *Devil's Doorway*, that the United Artists and Fox bid.

The *Next Voice You Hear*, that the Paradise, United Artists and Fifth Avenue bid.

Miniver Story, that the Paradise, La Tijera, United Artists and Fox bid.

To Please a Lady, that the Paradise, La Tijera, United Artists and Fifth Avenue bid.

King Solomon's Mines, that the Paradise, La Tijera, United Artists and Fifth Avenue bid.

What does that indicate to you as to whether or not there was a division of product among the exhibitors?

A. Well, that proved to me that there was no division at that time in that period, 1950 and 1951.

Q. Where there is a division of product among exhibitors, is there any way that one exhibitor wanting to break it up can do so in a bidding situation?

A. Oh, yes.

Q. How? A. They can just bid on it.

Q. And that ends the division?

A. That ends it.

(Testimony of George A. Hickey.)

Q. Is that right? A. That's right.

Q. The testimony that you were giving in the Metropolitan case that was read to you, did that have anything to do with Inglewood in 1950 and 1951?

A. No. That was in 1953. It had nothing to do with 1950 and 1951.

Q. Nothing to do with Inglewood?

A. Nothing to do with Inglewood.

Q. Now, some questions were asked you by Mr. Corinblit about an experimental run in a theatre. At the time the Paradise opened in August 1950, were the theatres wanting to play the 7 day run in Inglewood then bidding? A. Yes.

Q. How long had they been bidding?

A. Oh, they were bidding long before the Paradise was ever built.

Q. Who started that bidding out there?

A. Well——

Q. If I name the theatres that were bidding, maybe you [709] can tell me: The La Tijera, United Artists, Academy, Fifth Avenue, Fox Inglewood.

A. The La Tijera asked for bidding.

Q. Is that another so-called independent exhibitor?

A. That was an independent exhibitor, so we granted him the privilege to bid.

Q. When the Paradise comes along, why don't you give him an experimental run in this situation?

A. You can't have any experimental runs in bidding situations.

(Testimony of George A. Hickey.)

Q. Why not?

A. Well, because he would have to bid for it. If he bids for it, then we will know what his theatre will do, but he wouldn't bid. Very seldom would he bid for a picture.

Q. He never did bid enough?

A. He never did bid enough. Now, you take, for instance, during that time, if I remember correctly, the Academy bid on the picture and they guaranteed us \$4,025. I think that is correct. The United Artists bid \$2,750, I think that is correct, on the same picture. We took the Academy bid because the Paradise bid 14 days at 40 per cent, and the best bid was the Academy bid, and the next best bid was the United Artists bid.

But the Academy guarantee was more than the Paradise could gross. So I took the Academy bid and the guarantee, because [710] we were sure of \$4,205.

Q. Could the Paradise have got a picture out there on the bid?

A. If he bid enough, yes, if he bid more than the Academy, he could have got it.

Q. Did you ever refuse the Paradise the right to get the 7 day run by bidding for it and winning it?

A. No, sir.

Q. Did you ever offer the Paradise the right to play a 21 day run without any bidding at all?

A. Yes.

Q. Was there any theatre in Inglewood that

(Testimony of George A. Hickey.)

could play day and date with that 21 day run under your then clearance system?

A. I don't recall that at this time without looking at the records.

Q. Did Mr. Schreiber accept your offer to give him a 21 day picture and let him run it without any bidding at that time when he opened, or shortly after?

A. I think he did. I think he run a picture at 21 days.

Q. He could have a picture any time he wanted to without bidding on 21 days? A. Yes, sir.

Q. Now, I will turn to first run Los Angeles and this [711] matter of multiple first runs vs. the showcasing of pictures. What in your opinion does a multiple first run do to the prestige of a picture?

A. Well, when you compare it with a run downtown and a run in Hollywood, it hurts us. We don't like it.

I would like right now to run the Loew's State Theatre downtown and get—I would love to get the Chinese Theatre in Hollywood.

Q. You just want the best.

A. Yes, I want the best, and that is the best theatre in Hollywood. I wanted that when I had the Egyptian. I would have preferred the Chinese, because in my opinion the Chinese Theatre is one of the finest theatres in the state.

Q. What would that do for the prestige of a picture to have a show case in the Loew's State and the Chinese, let us say?

(Testimony of George A. Hickey.)

A. It would give us the opportunity to advertise the picture properly and make it more valuable for the multiple runs and all runs after that.

Q. What does the multiple run do to the overall payoff of a picture?

A. Well, the multiple runs, to my way of thinking and my experience with them, is that it isn't a good way to distribute your pictures. The pictures go into 11 or 12 theatres—11 theatres, and the picture is in and out before the [712] public really knows how good the picture is, and we have to then depend upon the picture doing business in the other houses beyond that after that.

The multiple runs we don't like. We don't like—there are two things in this business we don't like. We don't like bidding for the first thing. We never asked for it and we don't like it.

We don't like multiple runs because we don't get a chance to properly advertise and exploit our pictures so as to make them valuable throughout the territory.

We don't depend upon the revenue that we get out of the show case runs. That is the least of our troubles and thoughts. When we depend upon is to put them into two show cases in this city, one downtown and one in Hollywood, and advertise them properly so we can get all the money that we are entitled to out of all the neighborhood houses, and the houses in and adjacent to the city of Los Angeles, and in doing that we can be very successful.

But in shoving pictures into 11 houses, drive-ins

(Testimony of George A. Hickey.)

and hard-top houses, and I mean by hard-top houses theatres, regular theatres—we call them hard-top houses. The picture goes in. It is advertised this week and it opens up next week. It is played and gone and nobody knows anything about it.

It costs us a lot of money and I don't like it, and [713] if there was a house in Hollywood that I could get, I would go right back to the two show cases right tomorrow.

Mr. Mitchell: That's all. [714]

Mr. Corinblit: There are only two questions, your Honor, that I would like to ask.

The Court: Very well.

Redirect Examination

Q. (By Mr. Corinblit): I want to show you, Mr. Hickey, first may I have Exhibit 46-A-4?

I want to show you this Exhibit, 46-A-4, Mr. Hickey, which is the record of the play-off of first run in Los Angeles 1949 to 1951.

I want you to look at it and particularly look at the play-off beginning with the picture Asphalt Jungle. Downtown it played the Orpheum and Hawaii. Is that the time—I think you testified to this, but I want to get absolutely straight, is that the time you began bidding first run downtown, the Orpheum and Hawaii, when they played this picture? They bought that on bid?

A. I don't know whether that was the first picture or not, but this was bought on a bid.

(Testimony of George A. Hickey.)

Q. Well, can you take a look at it and see?

A. Well, I couldn't remember whether that is the date or not.

Q. I think you testified to that under Mr. Mitchell's examination. [715]

Now, I wanted to show you the testimony that I read into evidence from the Metropolitan case when you testified about collusion, and I want to call your attention——

Mr. Mitchell: Now, that is an ugly word for exhibitors dividing up product and I object to the characterization.

Mr. Corinblit: Well, it is in the deposition.

The Court: Overruled.

Q. (By Mr. Corinblit): It is Mr. Hickey's statement.

This question—this is already in evidence, but can you give me an idea——

A. Pardon me. What date is this?

Q. This is 1949 and the date of the bidding is June of 1950 first run.

A. This is '53.

Q. All right. Now, I want to call your attention to your question and answer already in evidence:

“Can you give me an idea whether it was ten years ago or two years ago?”

“A. No, it wasn't ten years ago. It was within the time we started to bid.”

Now, you remember that, don't you?

A. What are you referring to?

Q. Your reference here to the time “we started

(Testimony of George A. Hickey.)

to bid first run downtown" and that is with reference to the date of June 1950 when the Orpheum and the Hawaii began to [716] bid. Do you deny that?

A. No, I don't deny it if it is in there, but I don't exactly understand what you are talking about.

Q. All right. I think that is all.

Mr. Mitchell: May Mr. Hickey be excused?

The Court: Yes.

Mr. Corinblit: Yes.

The Court: You may be excused.

Call your next witness.

Mr. Corinblit: We will call as an adverse and hostile witness Mr. Bert Pirosh.

BERT PIROSH

called as a witness by the plaintiff under Rule 43(b) of the Federal Rules of Civil Procedure, having been first duly sworn, testified as follows:

The Clerk: State your full name.

The Witness: Bert Pirosh.

The Clerk: Is that spelled B-e-r-t?

The Witness: Right.

Direct Examination

Q. (By Mr. Corinblit): Mr. Pirosh, by whom are you employed?

A. Fox West Coast Theatres and National Theatres. [717]

Q. How long have you been employed by those two companies? A. Since 1937.

(Testimony of Bert Pirosh.)

Q. What is your position?

A. I am a film buyer.

Q. Are you the chief film buyer now?

A. Yes.

Q. In 1949, and '50 and '51, you were also employed by the defendants, is that correct?

A. That is correct.

Mr. Mitchell: By whom? By the defendants?

Mr. Corinblit: Yes.

Mr. Mitchell: He doesn't mean he was employed by all of the defendants.

Q. (By Mr. Corinblit): By whom were you employed at that time?

A. Fox West Coast Theatres and National Theatres.

Q. Now, when in 1949, '50 and '51—you were also a film buyer at that time, isn't that correct?

A. That is correct.

Q. And you were in charge of the booking department as far as Fox West Coast was concerned, is that correct?

A. In Southern California.

Q. In Southern California? A. Yes. [718]

Q. Now, you are aware—I will withdraw that.

In about 1949 you became aware, did you not, that Fox and United Artists Theatres Circuit were terminating their joint interests in certain theatres in California, is that correct?

A. I understood then that it was being contemplated.

Q. And you learned that certainly in the spring of 1949, is that correct?

(Testimony of Bert Pirosh.)

A. Spring or summer.

Q. Now, in the fall of 1949, in September or October or August, you had a conversation with a representative of United Artists Theatres Circuit, Inc., Mr. Pat DiCicco, did you not?

A. I had several conversations with Mr. DiCicco.

Q. Mr. DiCicco at that time was the general manager of the United Artists Theatres Circuit, Inc., is that correct?

A. I don't know what his job was at that time.

Q. Well, what did he do as far as the theatres were concerned?

A. Well, I don't know. In 1949 we were operating Fox West Coast or United West Coast Theatres were operating the United Artists Theatres.

Q. Now, the discussions you had in August, September or October, 1949, were some place in the Fox West Coast [719] offices, is that correct?

A. I think that is correct.

Q. Now, at one of these meetings, Mr. DiCicco stated to you that the United Artists Theatres was probably going to be operated or that Fox West Coast Agency would no longer be operating, buying or booking for the United Artists theatres at some time in the near future, isn't that correct?

A. Which United Artists theatre?

Q. The one in Inglewood.

A. That is right.

Q. He told you that? A. Yes, sir.

Q. And then he told you that when that hap-

(Testimony of Bert Pirosh.)

opened he intended to operate that theatre on a 7-day availability, is that correct?

A. He said that was his intention.

Q. Now, up to that time the United Artists Theatre was generally operating on a 14-day availability, is that correct?

A. I think it was operating either on a 7 or the 14-day availability.

Q. And at that meeting you told Mr. DiCicco that you thought he was making a mistake; that he would make more money on 14 days but DiCicco said he was going to operate it on 7 days, is that correct? [720]

A. He said that he was going to try to.

Q. Now, at that time, the time of that meeting, you recall that most of the distributors were offering their pictures on a competitive basis in Inglewood?

A. That is right.

Q. And is it a fact that Mr. DiCicco asked you not to bid on Leow's pictures?

A. Well, I think before I can answer that question I have to go back a few months to give you an idea of what the current situation was in Inglewood generally.

Q. Mr. Pirosh, I am sure that your counsel will ask you a great many questions and will permit you to develop the point for the defense.

I would just like—I would appreciate it if I could just get an answer to these questions for the moment.

(Testimony of Bert Pirosh.)

Now, my question to you is this: Did Mr. DiCicco ask you at one of these meetings not to bid on Loew's pictures? A. Yes, he did.

Q. And did he tell you that he wanted to bid on them for the United Artists Theatre?

A. I will have to correct my answer to your previous question.

At the time I talked to Mr. DiCicco we were still operating the United Artists Theatre in Inglewood.

Mr. DiCicco asked me if we would make all bids on Metro pictures in Inglewood on behalf of the United Artists Theatre so long as we were continuing to operate in the town and I agreed.

Q. Mr. Pirosh, did you give your deposition in the case? A. Yes, sir.

Q. And have you signed that deposition?

A. No, sir.

Mr. Corinblit: Do we have an executed copy of the deposition?

Mr. Johnston: I have a copy. You may use the deposition if you care to without his signature.

Mr. Corinblit: Well, your Honor, I would ask that the witness be requested to execute the deposition so that we can——

Mr. Johnston: And I will ask that your plaintiff sign his deposition at the same time.

Mr. Corinblit: Yes, we will sign the deposition, counsel, before a witness takes the stand.

Mr. Johnston: Before you ask us to sign one,

(Testimony of Bert Pirosh.)

I would just as leave have your people sign their depositions also.

Mr. Corinblit: We will pass this for the time being, your Honor.

Mr. Johnson: What are you talking about with respect [722] to this deposition?

Mr. Corinblit: With respect to the deposition of Mr. Pirosh?

Mr. Johnston: Yes.

Mr. Corinblit: I am speaking with respect to Mr. Pirosh.

Mr. Johnston: What page?

Mr. Corinblit: On page 7.

Q. Were you asked this question and did you give this answer:

“Now, what else was said—what was said about bidding or no bidding for product in the Inglewood area at that time?

“A. I believe at that time most of the distributors were offering their pictures in Inglewood on a competitive bidding basis.

“Mr. DiCicco asked me, as I recall it, not to bid on Loew’s pictures; that he wanted to bid for them in the United Artists Theatre.”

Were you asked that question and did you give that answer?

A. Yes. I am trying to explain, Mr. Corinblit, that Mr. DiCicco had a twofold request. He requested us to make any bids on Loew’s pictures

(Testimony of Bert Pirosh.)

while we continued to operate the theatre, which was for another five or six months as it turned out, on behalf of the United Artists Theatre and [723] after that he made the further request that after United Artists Theatres Circuit was operating the theatre, that then he wished us to refrain from making any bids on Metro pictures. [724]

Q. So he did ask you not to bid on Loew's pictures.

A. That is correct.

The Court: May I ask a question? At this time you were operating United Artists. You were also operating some other Fox theatres?

The Witness: Yes, sir.

The Court: Did he request you not to bid for Loew's pictures for all Fox theatres, or just for United Artists?

The Witness: In Inglewood, your Honor, we were operating the Academy Theatre, the Fifth Avenue, Fox, and the United Artists theatres. He said it was his intention after he commenced operating his theater to try to get the Loew's pictures in the United Artists Theatre on the 7 day availability.

The Court: Exclusively?

The Witness: Exclusively in the Inglewood area. Loew's was offering only one run in that area.

I agreed so long as we were continuing to operate the theatre we would make our offer for Loew's product on behalf of the United Artists Theatre. We had the majority interest in the theatre and if the theatre made money, we would make it.

The Court: After the theatre was turned over

(Testimony of Bert Pirosh.)

to United Artists, were you not to bid for Loew's picture for [725] the other Fox houses?

The Witness: Well, I tried to tell Mr. Corinblit it was hard to answer this question without going back into the background and he wouldn't let me do it that way, so without understanding what had transpired in Inglewood in the few months preceding this conversation with Di Cicco, it is impossible to understand this evidence.

The Court: You agreed not to bid for Loew's pictures. Did you agree not to bid for United Artists, or did you agree not to bid for all other Fox theatres? That is what I am trying to get at.

The Witness: There was no agreement. As long as things were in the state they were in in Inglewood at that time, your Honor, and I am not permitted now, I guess, to elaborate, I told Mr. Di Cicco he could go ahead and negotiate with Loew's on behalf of the United Artists Theatre, and until conditions changed I would put in no offers at the Academy or the Fifth Avenue or the Fox, yes, sir.

The Court: All right.

The Witness: There is quite a bit of background for this.

Q. (By Mr. Corinblit): At that meeting with Mr. Di Cicco, he told you if he got Metro pictures, he would not bid against you for Paramount pictures? Didn't he say that?

A. I don't recall his saying that. [726]

Q. You don't recall that he didn't say it?

A. I am pretty sure he didn't say it.

(Testimony of Bert Pirosh.)

Q. That he didn't say it. You know subsequently he did not bid for Paramount pictures?

A. Well, I think what Mr. Di Cicco did say was that if he were able to get the Loew's pictures, which were very good pictures in those days, for the United Artists Theatre, he would probably be able to operate the theatre on Loew's product exclusively. That was his hope, in any event.

Q. During the short period of time after the conversation, and there are some other elements of the conversation that we will come back to, during a short period of time after this conversation, in fact you did not put in any bids on behalf of United Artists Theatre for Paramount pictures, isn't that correct?

A. The record would show if I did or I didn't.

The Court: Well, do you remember?

The Witness: No, sir, I do not remember.

Q. (By Mr. Corinblit: Now, what was said with respect to Warners or Universal or United Artists or Columbia or RKO at this meeting with Mr. Di Cicco?

A. Well, with respect to Warner Bros. and RKO, at that time they were licensing their pictures to the La Tijera and Imperial Theatres, generally licensing them.

Q. That arrangement was arrived at some time shortly [727] before this meeting in a conversation between you and the operator of the La Tijera Theatre, isn't that correct?

A. We discussed it, yes.

(Testimony of Bert Pirosh.)

Q. About when did you have that conversation?

A. I think that was probably in May or June of 1950—1949.

Q. At that conversation with Mr. Kupper of the La Tijera Theatre——

Mr. Johnston: Counsel, you haven't previously identified Mr. Kupper. I think you ought to lay some foundation.

Mr. Corinblit: Yes.

Q. Mr. Kupper was who in 1949, Mr. Pirosh?

A. There was a William J. Kupper, Jr., who was operating the La Tijera and Imperial Theatres in Inglewood.

Q. At that meeting with Mr. Kupper, he told you, did he not, that he wanted to have Warner and RKO product for the La Tijera Theatre and asked you not to bid for them, isn't that correct?

A. Mr. Kupper told me that he had been operating his La Tijera Theatre for about six months at that time—he had been operating the Imperial Theatre for a shorter period, that opened up some time in 1949, also—and he told me he was doing very badly in both theatres on a competitive bidding basis, and said that he was very anxious to eliminate the competitive bidding, if possible, in the Inglewood area. [728]

He told me that he would like to run the pictures of Warner Bros. and RKO in his two theatres, that he had spoken to both Warners and RKO as to the possibility of his running, exhibiting their pictures on a day and date basis between his two

(Testimony of Bert Pirosh.)

theatres. Up to then they had been licensing one run in Inglewood on the 7 day availability.

He told me that they were both agreeable to his doing this, and wanted to know if I would refrain from bidding on their pictures until he had a chance to try to negotiate for the pictures.

He said he was losing more money than he could afford in the theatres, and that he thought this would help him. He said if he had these pictures, he did not think he would need many of the pictures or any of the pictures released by the other distributors.

I told Mr. Kupper that if the distributors were agreeable, I had no objection, that we could try the thing out and see how it worked.

Q. You told him you were agreeable to that arrangement, right?

A. I told him I was willing to try it out and see what happened. That was what happened right then.

Q. This discussion was before the one you had with Mr. Di Cicco, wasn't it? A. That's right.

Q. And, of course, you told Mr. Di Cicco what your conversation was with Mr. Kupper, did you not? A. Yes, sir.

Q. And you know that after Fox and United Artists terminated, for a period of time Mr. Di Cicco did not submit bids against the La Tijera for Warner and RKO pictures, that is correct, isn't it?

A. I don't know what Mr. Di Cicco did. It was only a couple of months after Mr. Di Cicco started

(Testimony of Bert Pirosh.)

operating the theatres that Mr. Kupper came back to me and said he was not happy and he was going to go back to bidding, and everything went back to bidding again.

Q. Before that happened, Mr. Pirosh, just before that happened, you told Mr. Di Cicco of the conversations with Mr. Kupper and, of course, it was the understanding Mr. Di Cicco would not bid for Warner and RKO pictures, is that correct?

A. I made no understandings on behalf of Mr. Di Cicco.

Q. You did tell him what discussion you had had with Mr. Kupper? A. Yes, sir.

The Court: May I ask this witness a question? During this particular period of time was there enough of the Fox pictures to satisfy the demand of all the Fox theatres in the Inglewood area? You had a number of Fox theatres down there. [730]

The Witness: Yes, we had several. We were playing, in addition to the Twentieth Century-Fox pictures, the pictures released by Paramount, United Artists, I think Columbia, Universal, and we were not operating all of our theatres on the 7 day availability. Normally, our Fox Theatre in Inglewood, normally, played on the 14 day availability. We found it very profitable to do so.

The Court: And then you didn't have to have these pictures you were talking about, MGM pictures? You had plenty of pictures without the MGM pictures.

(Testimony of Bert Pirosh.)

The Witness: That's right, and our profits were very substantial without the MGM pictures.

Q. (By Mr. Corinblit): You did have to have Paramount pictures, though, didn't you?

A. We had to have some pictures.

Q. And you did get Paramount pictures during that time, didn't you?

A. I think we got most of the Paramount pictures.

Q. You know that the La Tijera did not bid on Paramount pictures, don't you?

A. This was a period from about somewhere in June or July, I think, of 1949, up until about the first of April of 1950.

Q. You know they did not bid against you for Paramount pictures during that time, right? [731]

A. I don't think they were.

Q. And the same thing is true, United Artists did not bid against you for the Paramount pictures during the period of time after it left Fox West Coast?

A. During that two or three months period I don't think they bid on the Paramount pictures, no, sir.

Q. Let's talk a minute about Universal pictures.

A. Yes, sir.

Q. What was the arrangement as far as Universal Pictures was concerned?

A. I don't think there was any arrangement whatsoever concerning Universal. I think we were

(Testimony of Bert Pirosh.)

negotiating with Universal and buying most of their pictures.

Mr. Corinblit: I would like to offer in evidence, and I will substitute a photostatic copy for this copy, the cut-off card for the La Tijera Theatre for the 683 group, indicating it was mostly in 1949.

The Court: What is the exhibit number?

Mr. Corinblit: As plaintiff's exhibit next in order, 51.

The Court: In evidence.

The Clerk: Exhibit 51.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 51.)

Mr. Corinblit: I will supply a photostat. [732]

Q. Mr. Pirosh, I want to read to you from the exhibit just introduced, which is the Universal cut-off card, in the column under Additional Terms, bidding situation, Inglewood first run, and a line through it, and then it says "split with Fox."

Doesn't that refresh your recollection, Mr. Pirosh, that Universal product was discussed in the meeting with Mr. Kupper, and that for the La Tijera Theatre you agreed as to Universal to split and he agreed to split with you?

A. I don't know what split with Fox means with reference to Universal. [733]

Mr. Johnston: Will you show him the document? I don't think he has ever seen the document that you hold in your hand. I don't think I have seen it either. Maybe I had better take a look at it.

(Testimony of Bert Pirosh.)

Mr. Corinblit: The only document that has been offered is Plaintiff's Exhibit 51.

The Witness: This one?

Mr. Corinblit: Yes.

Mr. Johnston: Excuse me. May I look at that too?

Mr. Corinblit: Certainly, go ahead.

Q. Now, Mr. Pirosh, my question is——

Mr. Johnston: May I look at what is underneath this?

Mr. Corinblit: Sure. They are the other cutoff cards.

Mr. Johnston: Covering what period?

Mr. Corinblit: I don't know, counsel. I am sure we will get to that later.

Mr. Johnston: I hope you will at this time.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, doesn't an examination of Plaintiff's Exhibit 51 refresh your recollection at all about the discussion with regard to Universal pictures with Mr. Kupper in 1949? A. Well, I don't recall any——

The Court: You can answer that yes or no. Does it refresh your recollection? If you say "No," that ends it.

The Witness: No, it doesn't. [734]

Q. (By Mr. Corinblit): Well, in fact, Mr. Pirosh—it is a fact that you and Mr. Kupper stated to each other you would split Universal pictures, and you allocated them one by one as they came out, isn't that correct?

A. I have no recollection of any conversation

(Testimony of Bert Pirosh.)

with Mr. Kupper with relation to Universal product.

It does seem from that exhibit that either Mr. Kupper or myself told Universal that we would like to discontinue bidding for their pictures, and apparently Universal was agreeable, and discontinued to bid, and licensed their pictures as they came out.

The Court: How did they license them? Did they give one to Fox and one to some other theatre, or was it by lot, or how did they license them?

The Witness: I would think, your Honor, they would license the pictures where they could sell them to the best advantage.

If Mr. Kupper needed a picture in his theatre as a top picture to play on percentage and I couldn't give them that kind of booking, I would say they would sell Mr. Kupper, and if I could give them a better play on their pictures, I would say they would sell to me.

It is true that Mr. Kupper and I may have had some conversations as to which theatre was going to talk to Universal about a particular picture. We tried to find room for [735] all the pictures, and I think we played them all. Universal apparently was satisfied with the arrangement.

The Court: Did you have any agreement as to what the bid was going to be and what you would bid and what the other theatre would bid?

The Witness: I had no agreement whatsoever with Mr. Kupper as to what he would offer for a picture.

(Testimony of Bert Pirosh.)

If I wanted to play it in my theatre, I would meet with the Universal people and negotiate for the picture as I would with any other.

The Court: How did Mr. Kupper know not to bid more than you if you were to get the picture?

The Witness: Universal, according to this exhibit, apparently discontinued bidding and negotiated for their pictures instead of licensing them on a formal competitive bidding basis during this period, is what it looks like to me from that exhibit.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, what about Columbia pictures? What discussion did you have with Mr. Kupper about Columbia pictures?

A. I don't remember any discussion with reference to Columbia.

Q. You don't recall any? A. No, sir.

Q. Now, how about United Artists pictures? What [736] discussion did you have with him about those pictures?

A. I don't recall that. The only discussion I recall with Mr. Kupper was with reference to Warner and RKO pictures. They wanted to play in his theatres. We may have discussed other things, but I just can't remember what else we did discuss.

Q. Now, I take it, whatever you discussed with Mr. Kupper at that prior meeting, you also discussed with Mr. Di Cicco of United Artists Theatre Circuit at the meeting in the fall of '49—that is, you mentioned to him everything that you had talked about with Mr. Kupper?

(Testimony of Bert Pirosh.)

A. I would think it quite likely that I did. [737]

* * * * *

Q. (By Mr. Corinblit): I want to put some names on this board so we can try to keep these matters straight as to your discussions.

I think you mentioned you had a discussion with Mr. Kupper, is that right? A. Yes. [742]

Q. And you also had a discussion or a series of discussions with Mr. DiCicco? A. That's right.

Q. Now, I want to ask you about one more person. You know Mr. Leo Miller? A. Yes, I do.

Q. And Mr. Miller was the chief buyer for the Warners Theatres in Southern California in 1949, '50 and '51, is that right? A. Yes, he was.

Q. Now, in addition to that—we will get to the names of those whom you had conversations with, the companies, pertaining to these matters.

First, with respect to Loew's. You had a conversation with Mr. Hickey having to do with your conversation with Mr. Di Cicco, did you not?

A. Yes, sir.

Q. I will put these names on the board as we come to them relating to your conversations and we will add them as they are brought out. Now, I want to begin first with a few more of the details of your conversations with Mr. Kupper.

Now, Mr. Kupper at that time, at the time of your conversations, I think you said they were in the summer of 1949? Mr. Kupper was operating the La Tijera Theatre located [743] at this point on the map, and the Imperial Theatre located at approxi-

(Testimony of Bert Pirosh.)

mately this point. Do you know the approximate distance between the La Tijera and the Imperial?

The Court: As I understood the parties were going to stipulate as to distances.

Mr. Westbrook: You have a paper which gives you the mileage between these theatres, counsel. It is on the list that I gave you.

Mr. Corinblit: I don't think that we can check that particular item from the list.

Mr. Westbrook: I am quite sure you can.

Mr. Corinblit: Do you have a copy of it?

Mr. Westbrook: I will give it to you in just a minute. [744]

Mr. Corinblit: Well, in the interim, we can——

Mr. Westbrook: It would be approximately five miles.

Mr. Corinblit: We will stipulate that fact, your Honor, that the distance between the two theatres is approximately five miles.

Q. (By Mr. Corinblit): Mr. Pirosh, Mr. Kupper told you in your conversation with him in the spring of 1949 that he wanted to play the La Tijera and the Imperial Theatres day and date with each other on the 7 day availability, did he not?

A. Yes, he did.

Q. And the product that he said he would like to play in those two theatres on the 7 day availability day and date was Warner's and RKO product, isn't that correct? A. Yes, sir.

Q. And subsequently to your conversation, Warners, at least for a period of time, and RKO did

(Testimony of Bert Pirosh.)

play day and date in the La Tijera and the Imperial Theatres, isn't that correct?

A. Yes. I think they continued to do that from approximately August of 1949 until about April, 1950, when they resumed competitive negotiation or competitive bidding in the area.

Mr. Corinblit: Incidentally, counsel, with respect to one more of the distances on your list, we have checked, [745] and I wonder if we could stipulate that the Academy Theatre is approximately 4.5 to 4.6—well, what was your distance? 4.4?

Mr. Westbrook: It is either 4.4 or 4.5, depending on whose figure you have. I have never seen any 4.6 figure.

Mr. Corinblit: All right, we will do that, 4.4 to 4.5 miles. The Academy is approximately four and a half miles from the Paradise Theatre, and the La Tijera is approximately a half mile further, five miles, from the Imperial Theatre.

Q. Now, when Warners and RKO licensed their product simultaneously day and date in the La Tijera and Imperial Theatres during this early period, you did not submit bids in competition with the La Tijera, isn't that correct?

A. That is correct.

Q. Warners, as far as you know, negotiated the playing of 7 day pictures in those theatres day and date, is that correct?

A. I suppose they did.

Q. In your discussion with Mr. Kupper at the time of your meeting, you also discussed with him

(Testimony of Bert Pirosh.)

the matter of a move-over run, that is to say, you discussed with Mr. Kupper an arrangement whereby pictures would be played in the La Tijera and moved over to the Fifth Avenue without any time intervening between the play-off, isn't that correct?

A. Well, I know that we did move over some of the Warner [746] and RKO pictures to the Fifth Avenue, and I would surmise that at that time I did request that privilege.

The Court: The Fifth Avenue was a Fox theatre?

The Witness: Yes, sir, that is a Fox West Coast theatre.

Q. (By Mr. Corinblit): After you discussed that matter of move-over from the La Tijera and/or Imperial to the Fox Fifth Avenue Theatre, I take it you discussed that matter with Warners and RKO, is that correct?

A. I know that we played some of their pictures, so I must have at least negotiated for some pictures, yes. I had to talk with somebody.

Q. As a matter of fact, you had Mr. Kupper write a letter to these defendants, to the defendant Warners, and also to RKO, with respect to that matter, did you not?

A. I wouldn't say that I had Mr. Kupper write a letter, no.

Q. Do you know that a letter was sent?

A. I don't recall any letter being sent.

Q. All right. Now, at the time that you had this

(Testimony of Bert Pirosh.)

discussion with Mr. Kupper, you also discussed with him the policy of playing a move-over from the Academy to the Fox Theatre, did you not?

A. I don't think there would have been any necessity for my discussing with Mr. Kupper what policy I might want to have in the Fox theatre. He had no interest in the Fox theatre. [747]

Q. Do you remember whether you had such a discussion or not? A. I do not.

The Court: May I ask the witness a question?

Mr. Corinblit: Certainly, your Honor.

The Court: I understood that this move-over was a move-over from an independent theatre to a Fox theatre.

The Witness: Actually what was occurring, your Honor, was that Mr. Kupper was playing pictures on the 7-day availability in Inglewood and we frequently licensed those pictures for the 14-day availability in the Fifth Avenue Theatre after he completed showing.

Mr. Mitchell: I can't hardly hear you, Mr. Pirosh, and I don't believe the jury can.

The Court: You are trying to convince the jury—you are not trying to convince me.

Mr. Mitchell: Could that answer be read?

The Court: Yes, read the answer, Mr. Reporter.

(Answer read.)

The Court: There was no move over, was there?

The Witness: In fact, if he played the picture on the 7-day availability and we played it—he played

(Testimony of Bert Pirosh.)

it for 7 days, and we played it on the 14-day availability, it could be construed as a move-over run.

The Court: Was your deal made with the independent or [748] with the distributor?

The Witness: I made my deals with the distributor.

The Court: You didn't make them with the independent theatre—you didn't agree with the independent to move this picture over to the Fox theatre?

The Witness: No, sir.

The Court: You made your deal with the distributor.

The Witness: I think that I asked Mr. Kupper if he would have any objection to reducing the clearance that he was asking or that he might have been granted by the distributors, to permit me to play the pictures on the 14-day availability.

The Court: Now, you have the 7-day availability and the 14-day availability. That availability was from where—downtown Los Angeles?

The Witness: Yes, sir.

The Court: Well, if you had a 14-day availability from downtown Los Angeles it didn't make any difference, did it, as to whether the independent was still playing the picture? There was no clearance, was there? You had the 14-day availability.

The Witness: Actually that is correct.

Q. (By Mr. Corinblit): But, Mr. Pirosh, before you discussed that matter with Mr. Kupper, there had been some clearance, isn't that right?

(Testimony of Bert Pirosh.)

A. I do not remember.

Q. But you remember discussing the matter of the move-over with Mr. Kupper. I think you have so testified. That is correct, is that right?

A. I imagine I did mention it to him, yes.

Q. All right. And after you discussed it with him, then you went to the distributors and they agreed, isn't that right?

Mr. Mitchell: "The distributors." Now, your Honor, let us have a foundation as to who we are talking about.

Mr. Corinblit: All right. Whatever distributors you went to, Mr. Pirosh. You can name them.

The Court: We were talking about Warner Bros. pictures.

Mr. Corinblit: Yes.

The Court: Did you talk to Warner's distributor?

The Witness: I don't know. Warners had been serving or licensing pictures in Inglewood for some time on both a 7-day and 14-day availability and I do not know if I talked to them at that particular period concerning it.

Q. (By Mr. Corinblit): You did talk to RKO though?

A. I do not recall any such conversation.

Q. You know that Mr. Kupper sent a letter to RKO, don't you?

A. I don't know that he sent a letter.

Q. All right. Now, I think you testified that Mr. [749a] Kupper at the time of this meeting,

(Testimony of Bert Pirosh.)

after all these matters were discussed, he wanted Warner and RKO, and with respect to this move-over matter, he said to you that if he had Warners and RKO he would not interpose any competitive bids with respect to Paramount, is that right?

A. I would think that he made some such statement.

Q. And he also made that same statement with respect to Loew's? A. I would think so.

Q. Now, on Universal, you also agreed with him that you would at that time——

The Court: Wait a minute. Universal is not a "him." You said you agreed with him. Who do you mean, counsel?

Mr. Corinblit: With respect to Universal you agreed with Mr. Kupper that the pictures would be divided as they came off, isn't that correct, in some fair and equitable way between you?

The Witness: I would not say that I agreed with Mr. Kupper as to how the Universal pictures would be played.

I think I explained yesterday that we negotiated with Universal for such of their pictures as we wished to play in our theatres and Mr. Kupper negotiated with Universal for such of their pictures as he wanted to play in his theatres. [750]

Q. But you also testified yesterday that you discussed with Mr. Kupper which one of you would proceed to negotiate for a picture, isn't that right?

A. At times we did.

Q. With respect to United Artists product, in

(Testimony of Bert Pirosh.)

your discussion with Mr. Kupper, you stated you intended to continue to play United Artists pictures, isn't that correct?

A. I don't remember what I stated with regard to United Artists pictures.

Q. Mr. Pirosh, I want to show you the transcript of your deposition taken in this case, page 40, at line 15, and ask you to read the question at line 15 and your answer at line 18.

A. You said, "Did Mr. Kupper state"——

The Court: Read it to yourself.

The Witness: I'm sorry. All right. I have read.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, do you now recall that Mr. Kupper stated that he would not go after United Artists product and that Warners and RKO would be sufficient for him?

A. I recall, and I have testified I said that I thought overall Mr. Kupper stated that Warners and RKO should suffice him in his theatres. I still have no recollection of any discussion concerning United Artists.

Q. Any words that mentioned the company United Artists? [751]

A. I do not remember any conversation with respect to United Artists pictures, and in this deposition I did not say that I remembered any such discussion.

Q. I will agree with you that your statement in this deposition is not clear, but I would like to ask you about the statement.

(Testimony of Bert Pirosh.)

In the deposition I asked you this——

Mr. Johnston: What are you reading now?

Mr. Corinblit: The same question, line 15, and the answer at line 18.

Mr. Johnston: What page?

Mr. Corinblit: Page 40, same page.

Mr. Johnston: Thank you.

Q. (By Mr. Corinblit): "Did Mr. Kupper state that he would not go after United Artists product or he stated, I take it, that Warners and RKO would be sufficient for him, is that correct?"

And your answer, "Roughly, that is correct."

Your answer would be the same to the question, is that correct?

A. Well, actually, now that I have seen this in print, you asked me two questions.

Q. You are right.

A. And I answered the second question.

Q. That is, you were answering the question that [752] Warners and RKO would be sufficient?

A. That is correct, sir.

Q. When you had this conversation, after you had your conversations with Mr. Kupper, some time after that you discussed the matter of your understanding with him with someone at Warners and someone at RKO, is that correct?

A. That is correct.

Q. And do you remember the name of the person you talked to at Warners?

A. At Warners I must have talked to Henry Herbel.

(Testimony of Bert Pirosh.)

Q. Mr. Herbel is now deceased, is he not?

A. That is correct.

Q. Mr. Herbel at that time was the district manager of Warners, that is, he was in charge of selling Warner pictures in the Los Angeles exchange area, is that correct, and perhaps other districts as well?

A. Yes. He was the top Warners sales executive in Los Angeles.

Q. And you also discussed this matter of your discussion with Mr. Kupper with representatives of RKO, isn't that correct?

A. I am sure that I must have.

Q. And the person that you talked to there was whom?

A. I would say it would have been either Herb McIntyre, who was their district manager, or Harry Cohen, who [753] at that time was their branch manager.

Q. And Mr. Cohen is now deceased?

A. That is correct.

Q. What did you tell Mr. Herbel and what did you tell Mr. McIntyre and Mr. Cohen? Perhaps you want to take them one at a time.

A. Well, I have no specific recollection what I told Mr. Herbel. I would surmise that I talked to him concerning my conversation with Mr. Kupper and advised him of Mr. Kupper's wishes so far as Warner Bros. pictures were concerned, and to the best of my recollection Mr. Herbel said that he

(Testimony of Bert Pirosh.)

had no objection to licensing his pictures in the manner discussed.

Q. And you said you had no objection?

A. I said that at that time I had no objection.

Q. To get that clear again, you were telling Mr. Herbel you had no objection to Warner Bros. licensing their pictures on 7 day availability day and date between the La Tijera and the Imperial which, as was stipulated, are about five miles apart.

A. It would not have made any difference to me if the theatres were next door to one another, if they wanted to play pictures day and date and I didn't need the pictures to exhibit in our theatre, I didn't care which theatres played them. [754]

Q. Did you have substantially the same conversation with Mr. McIntyre and Mr. Cohen?

A. I would presume so.

Q. Did you have a conversation with someone at Universal with respect to the matter that you had discussed with Mr. Kupper as it affected Universal product?

A. I can remember no conversation with anyone at Universal.

Q. Did you have a conversation with someone at Columbia with respect to that same matter?

A. I can remember no conversation with anyone at Columbia.

Q. Now, subsequently, that is after the conversation with Mr. Kupper, you had a conversation with Mr. Di Cicco. He at that time was the general

(Testimony of Bert Pirosh.)

manager of United Artists Theatres Circuit, is that correct?

A. I don't know what Mr. Di Cicco's capacity was in 1949. [755-6]

Q. Well, you dealt with him as a representative of U. A. Theatres Circuit, is that right?

A. Yes, sir.

Q. Now, you told Mr. Di Cicco all of the matters that you had discussed with Mr. Kupper, isn't that correct?

Mr. Johnston: When was this?

Mr. Corinblit: This was about August, September or October, 1949. Is that correct?

The Witness: I would say that at that time I told Mr. Di Cicco anything concerning my conversations with Mr. Kupper that might have affected the United Artists Theatre in Inglewood.

Q. (By Mr. Corinblit): Now, I want to turn to the matter of your discussion with Mr. Di Cicco concerning the product of the defendant Loew's Incorporated.

Now, at this discussion with Mr. Di Cicco in the fall of 1949, Di Cicco told you that they were going to operate the United Artists Theatres Circuit and that they did not want to bid unless it was necessary, isn't that correct? A. I believe so.

Q. He also said that they would like to play first run pictures in most of their theatres, isn't that correct?

A. In most of their theatres where?

(Testimony of Bert Pirosh.)

Q. Well, you were—how many theatres were there—I will withdraw that. [757]

At the time do you know how many theatres there were in which you had an interest with U. A. Theatres?

Mr. Johnston: I am going to object to that as being immaterial. The joint or stockholding interest with United Artists Theatres Circuit in other areas has no application to the problem at hand here.

The Court: Well, I think he can answer that easier than we can argue and in less time. The question is, do you know—yes or no.

The Witness: I don't know.

Q. (By Mr. Corinblit): Now, he did say to you, however, that he wanted to play first run pictures in most of their theatres. That is what he told you?

A. Well, I don't know how many theatres they had and I do know that there were some theatres where he did not intend to play first run pictures in Inglewood. For example, he was not interested in playing pictures first run. He was interested in playing pictures on the 7-day availability which is the subsequent run availability.

Q. That is first run in Inglewood, though, isn't it? A. It can be.

Q. Mr. Pirosh, do you remember that you gave your deposition in another case entitled "Goldwyn versus Fox West Coast Theatres?" A. Yes.

Q. And you gave your deposition as you do in each deposition under oath, is that right?

(Testimony of Bert Pirosh.)

A. Yes, sir.

Q. I want to show you page 159 of the transcript of your deposition taken in that case, and I want you to examine the line beginning with line 25 on page 158 and running over through lines 1 to 11 on page 159. I will ask you to look at that, please.

A. What line?

Q. The last question on the page.

Mr. Johnston: Just a minute, Mr. Corinblit, please.

Mr. Corinblit: Yes.

Mr. Johnston: Where is the terminal point at which you wish to have Mr. Pirosh stop?

Mr. Corinblit: At line 12.

Mr. Johnston: On page 159?

Mr. Corinblit: Yes.

Mr. Johnston: Now, your Honor, I would ask the court to read the portion indicated by Mr. Corinblit.

I submit it has no bearing upon the issues involved in this action and it relates by way of hearsay a conversation with another party.

I submit it has no materiality. If the court will indulge me by reading it.

The Court: The witness was asked to read the questions [759] and answers.

Mr. Johnston: Perhaps my statement is premature. I will wait for the question.

The Court: All right.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, does a reading of page 158, the question at the bottom

(Testimony of Bert Pirosh.)

of the page and page 159, from lines 1 to 12—lines 1 to 11 refresh your recollection that Mr. Di Cicco said to you at this meeting in August, September or October, that they would like——

Mr. Johnston: Now, just a minute.

Mr. Corinblit: That they would like to play first run pictures in most of their theatres.

Mr. Johnston: Now that you have read it, why, I will withdraw my objection. You might have done me the courtesy of phrasing your question so you don't read the deposition, so, go ahead.

Mr. Corinblit: Now, counsel, I asked that question precisely the same way I did before without regard to the deposition.

I didn't want to ask the witness any question that he has not already testified to.

Q. Mr. Pirosh, does that refresh your recollection that Mr. Di Cicco said that to you?

A. Yes, it does.

Q. And did he say that to you? [760]

A. Yes, sir.

Q. Now, Mr. Pirosh, Mr. Di Cicco also told you that he had had a conversation with Mr. Hickey of Loew's, Incorporated, isn't that correct?

A. That is correct.

Q. And he had discussed with Mr. Hickey the possibility of their licensing the coming Metro productions in their theatres where there was no bidding, isn't that correct?

A. That he had discussed that with Mr. Hickey?

Q. Yes. A. Yes, sir.

(Testimony of Bert Pirosh.)

Q. He told you that? A. Yes, sir.

Q. And he also told you that Mr. Hickey had signified that he had no objection, isn't that correct?

A. Yes. I think he told me that Mr. Hickey had said so long as he received the proper film rental that he would be very happy to sell those pictures if they developed the right film rental.

Q. Now, in response to that statement at that time or at a subsequent time, you told Mr. Hickey it was perfectly all right with you, isn't that correct? A. Well, I don't think that—

The Court: I think the witness has testified two or three times that it was perfectly all right with him; he [761] didn't care as long as he had enough pictures for his own theatres. He didn't care what the others did. He has already testified to that several times.

Mr. Corinblit: That is correct, but I think it is important. He stated to Mr. Hickey that he was agreeable as far as Fox West Coast was concerned. He stated that to Mr. Di Cicco and I think he can answer that question.

The Witness: If you are referring to the Inglewood-Westchester competitive area, I think I have already testified that Loew's were licensing their pictures on a competitive bidding basis at that time, and that Mr. Di Cicco asked me to attempt to license the pictures for the United Artists Theatre during the balance of the period that we operated the theatre.

(Testimony of Bert Pirosh.)

And he made the further request commencing with the time when they started to operate the theatre that he would like me to refrain from bidding on the pictures released by Loew's, and that within a period of only two or three months after he resumed operating the theatre everyone in the Inglewood area, the La Tijera and the Imperial and United Artists and our theatres were all actively bidding for the Loew's product. [762]

Q. Now, Mr. Pirosh, that is not the question I am asking you. I am asking you something very simple, whether or not in response to Mr. Di Cicco's statement that he wanted to bid first-run in their theatres, the United Artists theatres, on Loew's product, and he had talked to Hickey and Hickey said that was agreeable, whether you said to Mr. Di Cicco you agreed, that you were agreeable, and you were then speaking on behalf of Fox West Coast.

A. No, that is not true. I testified Mr. Di Cicco said he had talked to Mr. Hickey concerning non-bidding situations, and Inglewood was a bidding situation, and Mr. Hickey certainly would not make any agreement with that, with any exhibitor in a bidding situation, that he would license his pictures to that theatre. He determined who played the pictures by who sent in the best bid.

Q. Now, Mr. Pirosh, I want to show you your deposition in this case and call your attention to page 29, line 20, through the end of the page, and line 1 through line 10 on page 30. A. Yes, sir.

(Testimony of Bert Pirosh.)

Q. All right, sir. Now, were you asked this question and did you give this answer:

“Did he tell you that Hickey said”——

Mr. Johnston: Is this supposed to be impeachment?

Mr. Corinblit: Yes, sir. [763]

Mr. Johnston: I submit it is not impeachment. It is just what the man has testified to a minute ago.

The Court: Overruled. I think that is a question for the jury.

Q. (By Mr. Corinblit): “Did he tell you Hickey said he would like to play Loew’s product in the United Artists Theatre Circuit?”

“A. As I recall Mr. Di Cicco’s statement to me, he told me he had talked to George Hickey and had told Mr. Hickey he wanted to play the pictures released by Loew’s Inc., in the United Artists theatres wherever there was no bidding, and Mr. Hickey said to him something to the effect, as long as he got the proper film rentals, he certainly had no objection.

“Q. What did you say to that statement?

“A. I don’t know if I answered immediately, but eventually I believe I said it was perfectly all right with me.

“Q. Now, I take it when you said it was perfectly all right with you, you were speaking on behalf of Fox West Coast, were you?

“A. Yes.”

(Testimony of Bert Pirosh.)

Now, were you asked those questions and did you give those answers?

Mr. Johnston: I will stipulate he did.

The Witness: May I read the question immediately before this stuff? [764]

Q. (By Mr. Corinblit): Yes, sir. Before you do that, were you asked those questions and did you give those answers?

Mr. Johnston: I will stipulate he was asked every question in the deposition and gave the answers.

The Court: I know, but the witness can answer that.

Q. (By Mr. Corinblit): Were you asked those questions and did you give those answers?

A. Yes, sir.

Q. Were they true when you gave those answers?

A. Yes, sir.

Q. What question do you want to refer to?

A. The question immediately before all this was:

“And did he tell you:—

Referring to Di Cicco, I guess.

“—that he had discussed with Hickey the possibility of their licensing the coming Metro product in their theatres where there was no bidding?”

All of this conversation subsequent to that question was talking about situations where there was no bidding.

Q. All right. Now, at that time, Mr. Pirosh, United Artists Theatres Circuit, Inc., and Fox, in

(Testimony of Bert Pirosh.)

the fall of 1949, in August or September, perhaps the early part of November, 1949, had an interest in the Egyptian Theatre on Hollywood Boulevard, did they not? [765]

A. If we still retained an interest in the theatre at that time, I don't remember.

Q. The Egyptian on Hollywood Boulevard was playing Loew's first run pictures, was it not, in the fall of 1949, is that correct? A. I think it was.

Q. And there was in August, 1949 no bidding for Loew's pictures as far as the Egyptian was concerned, isn't that correct?

A. That is correct, sir.

Q. I am sorry. I may have forgotten whether I asked this. Did you state you didn't know how many theatres were in the pool between Fox and United Artists as of that date? You don't recall the number? A. I don't recall.

Mr. Mitchell: Just a minute. Pool?

Mr. Johnston: That is assuming a fact not in evidence, that there was a pool, and I object to the question on that ground.

The Court: Sustained.

Q. (By Mr. Corinblit): That were covered by the basic agreement and operated by United West Coast Theatre Circuit Corporation.

Mr. Johnston: I am going to ask you to restate the question. The court has sustained the objection.

The Court: Restate the question. He has answered the question.

(Testimony of Bert Pirosh.)

Mr. Corinblit: I will withdraw the question, your Honor.

The Court: He has already said he didn't know.

Q. (By Mr. Corinblit): Now, after your conversation, the conversation with Mr. Di Cicco that you have just referred to, you had a—no.

Speaking first with respect to Loew's, after the conversation with Mr. Di Cicco, you had a discussion with Mr. Hickey to verify Mr. Di Cicco's statement to you, isn't that correct?

A. That is correct.

Q. Where was that conversation?

A. In Mr. Hickey's office.

Q. And what did you say and what did he say?

A. I asked him if Mr. Di Cicco had spoken to him. I wanted to see if Mr. Di Cicco had told me what had transpired in his conversation or conversations with Mr. Hickey.

Q. And Mr. Hickey said to you that he had had such a conversation, that Loew's was agreeable, was that correct?

A. Mr. Hickey is always agreeable to selling his pictures to any theatre that will pay him the money he wants. He is strictly commercial.

Q. In that meeting with him, he said he was agreeable, [767] he said he had told Mr. Di Cicco, and he told you he was agreeable to the proposal of Mr. Di Cicco, is that correct?

A. As long as he received the proper film rental.

Q. Yes, I understand that, but so long as he re-

(Testimony of Bert Pirosh.)

ceived his proper film rental, he said he was agreeable, is that correct?

A. If he got the right money, that's right.

Q. And you said you were agreeable to that?

A. I said—look, if Mr. Hickey decides to sell somebody his pictures, it doesn't matter much if the other man is agreeable or not agreeable. Mr. Hickey does what he wants. I said that I don't know if I said I was agreeable. I had no objection to Mr. Hickey and Mr. Di Cicco working out details on Mr. Hickey's pictures.

Q. Now, in that same conversation with Mr. Di Cicco, you and he discussed the fact that either you or he or both of you would contact the distributors to see if they were agreeable to the matters you and he had discussed, isn't that correct?

A. I don't know how to answer that question unless we discuss each individual distributor.

Q. Well, at this same meeting with Mr. Di Cicco, he told you that with respect to those situations in which Fox and United Artists did have theatres in competition with each other, that he would like to play certain distributors in [768] those theatres, isn't that correct?

A. In some of the situations, yes, sir.

Q. And he specified each town and each theatre and what he wanted, isn't that right?

A. Yes.

Q. And you told him at that meeting what distributors' product you would like to have in each of those situations, isn't that right?

(Testimony of Bert Pirosh.)

A. If Mr. Di Cicco told me that he wanted, say, Loew's Inc. product in a theatre, and that was all he wanted, there would certainly be no necessity for me to tell him what I wanted.

Q. You would have the rest?

A. I would have what was left.

Q. Or if Mr. Di Cicco decided he wanted two or three companies, you would say you would take the rest, right? A. If we agreed.

Q. And with respect to that discussion between you, you then stated that you would contact the various distributors involved to obtain their consent to this arrangement, is that right?

A. Not necessarily, Mr. Corinblit, with reference to each situation. For example, if in Pomona I were to continue playing the product released by Paramount or United Artists or any company which I had heretofore been playing in our Fox [769] Theatre, I would have no occasion to talk to Paramount or to United Artists, because we were playing their pictures in the Fox Theatre and we expected to continue to play their pictures in the Fox Theatre.

Q. But if in another situation there was a change then you would discuss that with Mr. Di Cicco and discuss it with the distributors, is that right?

Mr. Johnston: I am going to object to roaming all over California and elsewhere in this lawsuit.

We have heard little enough about Inglewood and Westchester and now Mr. Corinblit is asking this witness about conversations relating to areas that

(Testimony of Bert Pirosh.)

have nothing to do with Inglewood and Westchester and I object on the ground that such questions are totally immaterial.

Mr. Corinblit: This is a discussion having to do with a general arrangement between these people. In other words, it is an over-all matter.

I am not going into detail. As a matter of fact, I don't have more than two or three more questions on this point.

The Court: The objection is overruled. Ask the two or three questions and we will leave the subject.

Mr. Corinblit: Will you read the question?

(Question read as follows: "Q. But if in another situation there was a change then you would discuss that with Mr. Di Cicco and discuss it with the distributors, is that right?")

The Witness: Well, with respect to Inglewood, of course, there was no necessity to talk to any of the distributors at [771] this time.

With respect to some of the situations I am positive that I did discuss the forthcoming change in the operation of the theatres with them, and possibly discussed with them that I would like to continue to license their pictures or that United Artists might try to license their pictures if the distributors were agreeable.

Q. (By Mr. Corinblit): And the various distributors signified their willingness to offer the pictures either to you or to United Artists?

Mr. Mitchell: Now, wait a minute, your Honor. If we are going into conversations, the "various

(Testimony of Bert Pirosh.)

distributors'' don't talk. If we are going to talk about what this person said and what another said—I mean, you can't properly generalize that way and I object on the ground no foundation is laid for any conversation with these distributors—who was present, who did he talk to?

How can we meet such a thing?

The Court: Objection sustained.

Q. (By Mr. Corinblit): Now, there is one more individual with whom you had a conversation that I want to go into, Mr. Pirosh, and that is Mr. Leo Miller.

Now, at the time that you, in 1949, '50 and '51 Warners, the defendant in this case, had an interest in the Warner Theatre downtown, correct? [772]

A. Yes, sir.

Q. And the Warners in Hollywood?

A. I think they did.

Q. And the Wiltern Theatre on Wilshire and Western?

A. Well, Warner Bros. theatres—Warner Bros. was operating those theatres. Now, whether they were owned by the defendant Warner in this case, I don't know.

Mr. Corinblit: Well, you will stipulate to that, won't you, counsel, that at that time they owned the Warner-Wiltern?

Mr. Mitchell: They operated it, one of the Warner companies operated those three theatres.

Mr. Corinblit: All right.

Q. Now, in addition to that, Warners had a the-

(Testimony of Bert Pirosh.)

atre in competition with Fox in Huntington Park, correct? A. Yes, sir.

Q. And in San Pedro? A. Yes, sir.

Mr. Mitchell: I object to this as being immaterial. We don't have to go outside of—I mean in to Huntington Park and try the entire area.

The Court: We have discussed San Pedro and Huntington Park. The objection is overruled.

Q. (By Mr. Corinblit): In San Pedro, correct?

A. Yes, Warners had a theatre there.

Q. And in Beverly Hills, right? [773]

A. Yes.

Q. Now, you had some discussions with Mr. Miller, who was a buyer for those Warner theatres at that time, did you not—that is in '49, '50 and '51?

A. What sort of discussion?

Q. Discussion about product with him?

A. I don't think I did.

Q. Well, in all of these situations, Mr. Pirosh, as of this time—well, eliminating for a moment the first run Los Angeles matter, you were customarily playing the product of certain distributors and Warners theatres were customarily playing the product of other distributors, is that correct?

A. That's correct, sir.

Q. And this arrangement continued, is that correct? A. Well,—

Mr. Johnston: Until when?

Q. (By Mr. Corinblit): Through 1949, '50 and '51?

(Testimony of Bert Pirosh.)

A. I would have to check some records to see how long it continued in some of the situations.

In San Pedro, for example, I am sure that in 1949 we were being offered the pictures released by Metro and Paramount, United Artists, Twentieth Century-Fox and most of the RKO pictures, and we were buying the pictures that were being offered us or, licensing them, and playing them. [774]

Q. And you were not going after the product being played in the Warner Theatre there, were you?

A. Well, I had all the pictures I needed.

Q. So you didn't go after them, is that correct?

A. That is right.

Q. And none of the distributors ever told you—the distributors whose product you were playing, that Warner theatres were trying to get the product that you had, is that correct?

A. Well, Warners commenced bidding against us at some time—I think it was in 1950 or '51. I could be mistaken. It may have been in '52. They started bidding against us in some of these towns and in Huntington Park, I think it was during this period, the Park Theatre commenced competitive bidding and we were bidding on product there.

Each individual town was a different setup. There was a drive-in in San Pedro which commenced bidding after Warners started the bidding.

Now, what year that was, Mr. Corinblit, I can't recall offhand. [775]

* * * * *

(Testimony of Bert Pirosh.)

Q. (By Mr. Corinblit): Mr. Pirosh, referring again to San Pedro, you testified that you were playing the product of certain distributors.

Mr. Mitchell: I object to that as being immaterial, whether he testified to that or not.

The Court: Overruled.

Q. (By Mr. Corinblit): I want to know if you can give me the answer to this question. Prior to the time that the San Pedro Drive-In came in, it is true, is it not, that no distributor whom you were playing in your theatre told you that the Warner theatres had asked to play that product?

Mr. Mitchell: Same objection.

The Court: Same ruling.

The Witness: I think I said some time between 1949 or 1950 or 1951 or 1952, somewhere in that period, Warner Bros. commenced bidding against us in San Pedro, and I am not sure whether it was before the drive-in was bidding for first run or after the drive-in was bidding for first run.

Q. (By Mr. Corinblit): All right. Before that time it is true no distributor told you Warners was trying to get the [779] product that your company was playing, is that correct?

A. You mean 1946, 1947, 1948, and so on?

Q. Before Warners started bidding.

A. I can't recall any such statement.

Q. Similarly, I just want to ask you about three situations, Mr. Pirosh, similarly in Beverly Hills, where Warners had a theatre and Fox had a theatre, you customarily licensed the product of certain

(Testimony of Bert Pirosh.)

distributors and they customarily licensed the product of other distributors, is that right?

Mr. Mitchell: Wait a minute. Let's get times for this, because if it is material at all, a time period is material.

Q. (By Mr. Corinblit): 1949, 1950 and 1951.

A. Well, I have to make the same answer, Mr. Corinblit. I do not remember if Warners were bidding against us in Beverly Hills in 1949, 1950 or 1951. They may have been or they may not have been.

Q. Prior to bidding, you customarily played the product of certain distributors in your theatre and Warners customarily played the product of other distributors in their theatre in Beverly Hills, is that correct? A. That's right.

Q. Prior to that time, you didn't negotiate or attempt to negotiate with the distributors that the Warner theatres were playing, isn't that correct?

A. Well, we had enough pictures to supply our theatre and saw no necessity for trying to get more pictures.

Q. So you didn't do it, right?

A. That's right.

Q. And similarly no distributor whose product you were playing told you that the Warner Theatre was trying to negotiate for the pictures that you regularly played, isn't that correct?

A. I don't remember if any distributor told me that or not.

Q. Now, in Huntington Park, which is the third

(Testimony of Bert Pirosh.)

and final situation in this group, again, prior to the time that an independent theatre came into that area, you were customarily licensing the pictures of certain distributors in your theatres and Warner was customarily licensing the product of certain other distributors in their theatres, isn't that correct?

Mr. Mitchell: Let's get the time fixed.

Mr. Corinblit: 1949, 1950 and 1951.

The Witness: I think during 1949, 1950 and 1951, there was competitive bidding in Huntington Park.

Q. (By Mr. Corinblit): We will get to that competitive bidding in just a minute, Mr. Pirosh, but before there was competitive bidding in Huntington Park, the same thing is true, is it not, you customarily licensed the pictures of certain [781] distributors and Warners customarily licensed the pictures of certain other distributors, isn't that correct? A. Yes, sir.

Q. You did not on behalf of your theatres attempt to negotiate for the pictures that were customarily being licensed in the Warners theatres, is that correct?

A. In Huntington Park, as I recall it, before the bidding started, for our California Theatre we had available the pictures released by Twentieth Century-Fox, Metro, Paramount, United Artists, and I believe three-quarters of the RKO product.

Q. 75 per cent of RKO, right?

A. That's three-quarters.

(Testimony of Bert Pirosh.)

Q. Go ahead. How about the Warner theatres?

A. Well, I haven't finished answering the question.

Q. I'm sorry. Go ahead.

A. And we had very fine pictures to play in our theatre and we were very happy to play these pictures, and we had no necessity for trying to secure the pictures released by the other companies.

Q. And you didn't do that, correct?

A. That is correct.

Q. And no distributor whose product you were regularly playing in your theatre in Huntington Park ever told you that the Warner theatres had attempted to negotiate for the pictures [782] that you had, right?

A. I don't remember any distributor telling me that.

Q. As a matter of fact, in the Huntington Park situation you had one distributor's pictures, RKO, divided 75 per cent and 25 per cent, didn't you?

A. That is the way RKO was licensing their pictures in Huntington Park.

Q. And you and Mr. Miller sat down at the beginning of each season or as the pictures came out and agreed what 25 per cent he was to get and what 75 per cent you were to get, and then you would submit that to RKO, correct?

A. We did this upon instructions from RKO, that this is the way they wanted to divide their pictures, and they asked Mr. Miller at the time, or

(Testimony of Bert Pirosh.)

whoever was in charge at Warner Bros., to arrange this division of their pictures with RKO.

Q. As a matter of fact, that 75-25 matter applied to San Pedro, didn't it?

A. Yes. In San Pedro RKO sold us 75 per cent of their pictures.

Q. And how about Beverly Hills?

A. In Beverly Hills RKO sold us 75 per cent of their pictures.

Q. I think you mentioned that there might have been something that you called competitive bidding in the Huntington Park area in 1949, 1950 and 1951. In that area the first time [783] competitive bidding arose was when an independent exhibitor named Mr. McClintock came into the area, correct?

A. Yes. Mr. McClintock had the Park Theatre in Huntington Park. [784]

Mr. Johnston: May I object to this? It was my understanding Mr. Corinblit was going to ask two or three questions, about a half-hour or so ago, concerning these outlying communities.

I submit that he has exceeded that limit by a considerable number, and again I say we are wandering in a field not material to the issues in this case.

The Court: How much longer are you going to be?

Mr. Corinblit: Just a few questions with respect to the Huntington Park matter.

The Court: What is "a few"?

Mr. Corinblit: Well, I am sure five minutes will do it and I am through.

(Testimony of Bert Pirosh.)

The Court: All right, go ahead.

Q. (By Mr. Corinblit): Now, in the Huntington Park area competitive bidding arose only when an independent bidder came into the area, Mr. McClintock.

A. I believe that is true.

Q. After that exhibitor came into the area and competitive bidding started, you and he had a discussion in which you agreed competitive bidding was to end, right?

A. Well, Mr. McClintock did come to see me and told me that he was not making any money in his Park Theatre; that he had quite a sizeable investment in the theatre and that he would like to be able to get pictures without the necessity [785] of bidding competitively for them, that is correct.

Q. And as a result of that, that was accomplished, is that right?

A. I think that for a short while some pictures were licensed in Huntington Park on which, at the request—in the Park Theatre, which, at the request of Mr. McClintock, was accomplished. I didn't make any bids. And that lasted a very short time and then, just the same as in the Inglewood situation, after a few months he started bidding again.

Q. Now, as a matter of fact——

Mr. Corinblit: I will withdraw that.

Q. Mr. Pirosh, referring now back to a discussion we talked about quite some time ago, the discussion with Mr. Di Cicco, after that discussion the United Artists took over the operation of a group of

(Testimony of Bert Pirosh.)

theatres which included the United Artists Theatre in Inglewood, isn't that correct, after your discussion some time after?

A. I think it was early in 1950.

Q. All right. Now, after that time or sometime in that period Mr. Freddie Stein, for United Artists Circuit, Inc., was responsible for doing the buying for United Artists Theatre, isn't that correct?

A. Well, I don't know if he was responsible for it, but he was doing some of the buying and booking, yes.

Q. And his responsibility carried on, or he had something [786] to do with the buying on and after January 1950 and all the way through September 1951 at least, is that correct?

A. Yes, I think that Mr. Stein was with them during that period.

Q. Now, when Mr. Stein was doing the buying, and beginning at this time that you say there was competitive bidding, real competitive bidding, in the Inglewood area, from time to time you had some discussions with Mr. Stein about whether or not you would bid for a particular picture or he would bid for a particular picture, isn't that right?

A. Well, I wouldn't say that I had discussions with Mr. Stein. If Mr. Stein would ask me whether or not I was going to make a bid on a specific picture, I would tell him the same as I would tell any other exhibitor in a competitive bidding situation.

Q. Now, as far as telling or discussing with Mr. Stein what you were going to put into the bid, you

(Testimony of Bert Pirosh.)

discussed that with him from time to time, did you not?

A. You mean I told Mr. Stein what we were going to bid on behalf of our theatres?

Q. Or asked him what he was going to bid?

A. I don't recall asking Mr. Stein what he was going to bid.

Q. You don't recall whether you did or did not?

A. I don't think I did. [787]

Q. Do you recall such conversations?

A. I am practically positive that I did not ask Mr. Stein what he was going to bid on any of his pictures—any pictures.

Q. You did talk to him about the bids?

A. I answered a question before in which you asked me, did I discuss with Mr. Stein—did I have discussions with Mr. Stein, and I think I said that I don't recall any discussions, but that, if Mr. Stein had asked me whether or not I was going to make a bid on a specific picture, I would tell him yes or no, the same as I would tell any exhibitor in a competitive bidding situation if I were asked the question.

Q. All right. Now, Mr. Pirosh, it is a fact, is it not, in the Los Angeles area that at one time or another since August of 1951—

Mr. Corinblit: I will withdraw that.

Q. It is a fact that since August 1951 Paramount has licensed its pictures on a multiple day and date policy in the Los Angeles area?

A. What do you call.

(Testimony of Bert Pirosh.)

Mr. Mitchell: I object to that on the ground no foundation has been laid to show that this witness knows how Paramount licenses its pictures.

Mr. Corinblit: Here is the chief buyer of Fox.

Mr. Mitchell: That is not Paramount. [788]

Mr. Corinblit: I am going into it a little further.

Q. Mr. Pirosh, you know how pictures are being licensed first run in the Los Angeles area and you have known since 1951 as a buyer?

A. Generally, yes, sir.

Q. Now, you have dealt with all of the film companies in that connection, haven't you?

A. With respect to our theatres?

Q. Yes.

A. Well, I have negotiated for pictures with each of the film companies from time to time.

Q. Now, since September 1951 it is a fact that Paramount has licensed its pictures on a multiple day and date basis?

A. I don't think that is true.

Q. You don't think it is true?

A. I don't think they started in 1951.

Q. When do you remember they started?

A. I think they started in nineteen—I think it was in 1952 or 1953 with the picture *The Greatest Show on Earth*.

Q. How about June of 1952? Does that sound about right?

A. Well, it has more of a chance than 1951.

Q. Now, since September 1951—and I am not trying to pin it down to the date now, but since that

(Testimony of Bert Pirosh.)

time—Warner [789] Bros. has licensed its pictures on a multiple day and date basis, isn't that right?

Mr. Johnston: Your Honor, I am going to object to this. It is going into a period beyond the issues in the complaint, which is September 1951.

The Court: One of the problems here is whether or not the position of the plaintiff is reasonable.

Now, according to the testimony that has been introduced, when the plaintiff asked for pictures originally one of the companies denied them pictures on the ground that they wouldn't give day and date and didn't have any seven-day run in Los Angeles.

Now, if it appears, and it does appear, that after the date in question, that is, after September 1951, they changed their policy so as to have simultaneous first run, it may have something to do with the question of reasonableness.

Mr. Johnston: It could possibly, your Honor, and it could also reflect changing conditions or a number of things where there might be more than one reasonable way to license pictures.

The Court: I think the plaintiff has a right to show this, and if they want to they can argue that they changed their position, and consequently the position they had before was not reasonable.

Mr. Johnston: I don't think that would be a valid [790] question in fact or in law, and that is the basis of my objection.

The Court: We are trying this before a jury,

(Testimony of Bert Pirosh.)

and the jury is the one to determine the facts. The objection is overruled.

Mr. Corinblit: Will you read the question, please.

(Question read as follows:

“Now, since September 1951—and I am not trying to pin it down to the date now, but since that time—Warner Bros. has licensed its pictures on a multiple day and date basis, isn’t that right?”)

The Witness: What is your interpretation, Mr. Corinblit, of “multiple run”?

Q. (By Mr. Corinblit): More than two or three runs.

The Court: You are talking about first run?

Mr. Corinblit: Yes, first run.

The Witness: First run Los Angeles more than three runs?

Mr. Corinblit: Yes.

The Witness: Warner Bros. in the last couple of years have released some of their pictures in this way, but not all of them and not their very good pictures.

Q. (By Mr. Corinblit): Now, I ask you the same question with respect to the distributors RKO.

A. RKO has in the last two or three years released some of its pictures in that way, but when they had a good [791] picture like *The Conqueror*, they played it in three theatres.

Q. They release some of their pictures on a multiple day and date basis?

(Testimony of Bert Pirosh.)

A. Yes, their bad pictures.

The Court: May I ask this witness a question?

Mr. Corinblit: Certainly.

The Court: From what has been testified by the witnesses in this case, I assume that there was a change of policy on the part of all the distributors somewhere around 1950 or '51 in which, instead of having the releases in showcase theatres, they had releases in a number of theatres in different localities in and around Los Angeles. Is that true?

The Witness: That is not true, your Honor.

The Court: That is not true?

The Witness: Not all the distributors and not as early as 1951 by any of them.

The Court: When was this change of policy?

There was a change of policy, was there not?

The Witness: Well, if you want me to tell you what I know about this and how it came about, I will be glad to do it.

The Court: Can't you answer the question: Wasn't there a change of policy?

The Witness: It is not that simple. There was a change of policy on the part of some distributors at some time, and some of them are now very sorry that they went into it. [792]

The Court: All right.

The Witness: This is a pretty complicated question.

The Court: I agree with you, and the jury will agree this is a complicated problem. There is no question about that. All right.

(Testimony of Bert Pirosh.)

He said there was no general change of policy. I thought maybe there was.

Mr. Corinblit: All right. We will go through it company by company, as we have to.

Q. Now, with respect to the distributors, we covered Paramount and covered RKO and we have covered Warners on some of their pictures. [793]

Q. Some of their pictures. We have already had testimony about Loew's. I am thinking of the fifth major. With respect to the distributor Twentieth Century-Fox, some time after 1951, they played their pictures on a multiple day and date policy, is that correct?

The Court: I understand, Mr. Corinblit, that Fox West Coast during all this period of time played Twentieth Century-Fox pictures first run day and date in a number of their theatres.

Mr. Corinblit: Oh, but, your Honor, there is an important change that takes place in 1952. There is an important change. Twenty Century-Fox and Fox West Coast are no longer connected in 1952, so there is a change in that connection. That is another point we will establish here with respect to this matter of multiple day and date, the relationship of change to multiple policy day and date to the fact that Twentieth Century-Fox and Fox West Coast are no longer related to each other after approximately September 1952.

The Court: You are making a statement here, and I don't think there is any evidence before the jury to that effect.

(Testimony of Bert Pirosh.)

Mr. Corinblit: Yes, sir.

The Court: Can we get a stipulation that before 1951 there was a relationship between Twentieth Century-Fox and Fox West Coast? [794]

Mr. Johnston: Yes.

The Court: Can we get a stipulation that after 1951 that relationship no longer existed?

Mr. Johnston: After 1952, your Honor.

The Court: 1952.

Mr. Corinblit: September 1952. Is that about right, counsel?

Mr. Johnston: I believe it was that, approximately. I am simply stipulating this, prior to September, if that is the correct date, 1952, Twentieth Century-Fox owned Fox West Coast for practical purposes, let's assume.

The Court: And after that?

Mr. Johnston: And after that date, the situation did not exist.

The Court: All right.

Q. (By Mr. Corinblit): Now, since September 1952, Mr. Pirosh, Twentieth Century-Fox has licensed its pictures on multiple day and date.

A. Fox has licensed some of its pictures in four areas in the metropolitan Los Angeles area. They have released just about all of their pictures for a one-theatre show case exhibition in this area, and I think they have played one or two very inferior pictures in what you term as 10- or 11-theatre multiple runs, but all of the quality Fox pictures for

(Testimony of Bert Pirosh.)

the last three years, at least, have been played [795]
in a one-theatre show case.

Q. Just one theatre? A. One theatre.

The Court: And that theatre was what?

Mr. Corinblit: Chinese.

The Witness: That theatre could be the Chinese.
That theatre could be the Wilshire. They played
a picture in the Beverly Canon Theatre. They played
a couple of pictures in the Warner's Beverly The-
atre.

The Court: Using just one theatre?

The Witness: Competitive bidding offered to any
exhibitor who has a theatre that they think is suit-
able for a show case run in the downtown Los An-
geles or Hollywood or Wilshire areas, which in their
opinion are the only areas suitable for a show case.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, Uni-
versal since, oh, August, September 1951, prior
thereto, Universal had had five theatres playing first
run. Now, since that time they have expanded the
multiple day and date to even a larger group of the-
atres, isn't that right, or they did during the period
after September 1951?

A. When you keep talking about 1951, you are
going awfully far back on this, Mr. Corinblit. Most
of the companies which went into the so-called mul-
tiple run have done it within the last two or three
years, practically all. [796]

Q. Do you have a distinct recollection on Uni-
versal? I realize your statement is generally correct.

A. I think Universal started to go into this with

(Testimony of Bert Pirosh.)

most of their pictures, I would say in the last two or two and a half years, or maybe three years, but you could find out from the Universal people. I don't know.

Q. Now, with respect to the distributor Columbia, since 1951 at some time that company has exhibited its pictures on multiple first run?

A. Not their better pictures. Picnic was exhibited in one theatre. Autumn Leaves was in one theatre. The Eddy Duchin Story currently is playing Warner's Beverly. The next important picture they have, Solid Gold Cadillac, with Judy Holliday, is being played in one theatre.

Their inferior pictures, a great many of them, they have played in this so-called multiple run, but not their good pictures.

Q. With respect to the distributor United Artists, some time since 1951 they have licensed pictures on a multiple day and date policy?

A. United Artists has shown practically all of their good pictures, their best box-office pictures, in one theatre. They have shown the overwhelming majority of their pictures in three or four theatres. They have shown four or five junky pictures that nobody else wanted to buy in the so-called [797] multiple run.

Q. Even before 1951, Mr. Pirosh, do you remember the term pre-release? Do you remember that?

A. I have heard it used.

Q. What did that term mean?

A. Well, that is a hard question to answer. Pre-

(Testimony of Bert Pirosh.)

release meant one thing to one distributor and another thing to another distributor. Some distributors called a road show picture like *Gone With the Wind*, that played for maybe a year on very high admissions in a very few theaters, they called that a pre-release.

Some companies called any single-theatre run a pre-release.

I don't know what a pre-release is myself.

Q. Prior to 1951, you know there was usually recognized a distinction between pre-release and regular release on first run, do you remember that?

A. No, I don't recall that there was any difference in it then than there is now.

Q. You don't remember that?

A. A pre-release gave a distributor an excuse to try to get higher terms for his pictures.

The Court: You mean there was also an excuse to make the customer pay more to get in the theater, too, don't you? [798]

The Witness: Not in 1951.

The Court: Prices didn't go up?

The Witness: The theatre probably had to pay so much for the picture, your Honor, that they had to raise admission prices to make any money.

Q. (By Mr. Corinblit): Perhaps we can get this one question out of the way. You don't remember the distinction that was generally recognized when you had a road show or pre-release picture as distinguished from a regular first run?

A. The only distinction I recall is that we gen-

(Testimony of Bert Pirosh.)

erally were asked to pay more money for the picture.

The Court: Well, when you paid more money for the picture, you passed that on to the customer, didn't you?

The Witness: That seems to be true in most any business, your Honor. I don't know any other way to get it back.

The Court: The King And I is playing at the Chinese Theatre now?

The Witness: Yes, sir.

The Court: That is a Fox picture?

The Witness: Yes, sir.

The Court: Prices have been raised for The King And I?

The Witness: Yes, we raised prices.

The Court: You paid more for the picture?

The Witness: Yes, sir.

The Court: You are getting more from the customers?

The Witness: Yes, sir, and the customers love the picture.

The Court: It's a good picture, even MGM admits it's a good picture.

The Witness: I am glad to know that Mr. Hickey conceded somebody else had a good picture finally.

Mr. Corinblit: I have no further questions.

Cross Examination

Q. (By Mr. Johnston): Mr. Pirosh, Mr. Corin-

(Testimony of Bert Pirosh.)

blit has asked you about some conversations you had with Mr. Di Cicco and Mr. Kupper in 1949. Will you just tell me or tell the jury, I should say, the date or the approximate date of your first conversation with Mr. William Kupper?

A. As I recall it, my first conversation with Mr. Kupper was somewhere around June 1949.

Q. And then some time after that you had a conversation that you have related this morning with Mr. Pat Di Cicco, is that right?

A. I think my conversation with Mr. Di Cicco was in August or September 1949.

Q. Mr. Corinblit didn't ask you about a conversation [800] that you had with Mr. Kupper later on, and I want you to tell the jury about a subsequent conversation you had with Mr. Kupper, and tell me the date and what was said by you and by Mr. Kupper.

The Court: And the place where the conversation took place.

Q. (By Mr. Johnston): And the place.

A. Well, it was in March or April 1950, approximately.

Q. Where did it take place?

A. In my office in Los Angeles. Mr. Kupper came to me and told me that his theatres were not doing well, he had been playing the La Tijera and Imperial Theatres day and date, and that he wasn't making any money, and that he had decided that from then on he was going to try to license the best

(Testimony of Bert Pirosh.)

pictures released by any companies on a competitive bidding basis.

Q. And what did you say, Mr. Pirosh, if anything?

A. All I could say was, "Okay, we will bid." If I didn't bid, Mr. Kupper would have bought all the best pictures, and we wanted some of them, too. So from then on we bid and it was pretty intensive bidding.

Q. Did you at about that time have a conversation with Mr. Pat Di Cicco?

A. Yes, I had a conversation. I think it was with Mr. Di Cicco, and possibly Fred Stein also. This conversation was either in my office or in the office of United Artists Theatres. [801] The offices were only a couple of blocks away.

Q. Tell us what was said on that occasion, please.

Mr. Corinblit: May we have the time?

Mr. Johnston: Yes, indeed.

Q. About when was this conversation?

A. I would say it was within 48 hours of my conversation with Mr. Di Cicco, possibly the same day. I don't know.

Q. You mean within 48 hours of your conversation with Mr. Kupper?

A. I mean Mr. Kupper. Pardon me.

Q. Yes.

A. I told Mr. Di Cicco and Mr. Stein that Mr. Kupper advised me he was going to commence bidding for all the pictures, and that we were going to

(Testimony of Bert Pirosh.)

bid for the pictures, and in order to book their theatre they would probably have to bid, too. They could do whatever they chose to do.

Q. Now, you say this took place as best you can remember some time in March or April 1950, is that correct, Mr. Pirosh?

A. That is correct.

Q. Both of these conversations?

A. Yes, sir.

Q. And then did you start from that date on bidding for the pictures of all distributors who were offering their films or pictures in the Inglewood-Westchester area on a bidding [802] basis?

A. Well, we made offers on a bidding basis to the companies which had bidding for those pictures which we thought we could make money with in our theatre.

Q. And you continued with that method of purchasing or licensing pictures from that time on continuously through September 1951, isn't that right, Mr. Pirosh?

A. Yes, sir. I think we are still bidding in Inglewood.

Q. I would like to——

The Court: May I ask a question before you leave this subject?

Mr. Johnston: Surely.

The Court: The period of damage in this case is from September 1950 to September 1951. It is your testimony, is it, that during that entire period there was bidding in the Inglewood-Westchester area?

(Testimony of Bert Pirosh.)

The Witness: For the 7 day availability?

The Court: Yes, for the 7 day availability.

The Witness: Yes, sir.

The Court: And you participated in that bidding?

The Witness: We certainly did.

The Court: You didn't have any agreement to lay off the bidding with any distributors, did you?

The Witness: No, sir.

The Court: Or any other parties? [803]

The Witness: No, sir.

The Court: You bid for the pictures that you wanted?

The Witness: Yes, sir.

The Court: And the pictures you didn't want, you didn't bid for?

The Witness: That is correct. Sometimes we had to go back and buy one of them when we couldn't get the picture we wanted.

The Court: All right.

Q. (By Mr. Johnston): Now, perhaps you can tell us about this. What companies in 1950—I am speaking of the period, we will say starting with the month of April, 1950, were offering their pictures on a competitive bidding basis in the Inglewood-Westchester area on the 7 day availability?

A. Well, Metro-Goldwyn-Mayer pictures, or Loew's Inc., whichever it is. [804]

Q. That is the same company? A. Yes.

Q. MGM or Loew's?

(Testimony of Bert Pirosh.)

A. Right, Paramount, RKO and I think Universal and Columbia.

At that time I believe that Warner Bros. and United Artists Picture Company were licensing their pictures by what they called competitive negotiation. They did not write letters to the various exhibitors as in formal competitive bidding but invited offers.

The Court: How about Fox?

The Witness: At that time we were owned by Fox and we were playing their pictures in our own theatres.

Q. (By Mr. Johnston): Then all of the companies or the principal companies licensing pictures, with the exception of Warner Bros. and United Artists and Fox, were licensing pictures starting with this date of April, 1950, on the basis of formal competitive bidding.

Now, by that you mean, Mr. Pirosh, that the company in question who was using this form, would send out a written solicitation for a bid to you and then you would say: "We don't want to bid," or "We offer so much on the picture" in writing in response to solicitation, is that the way it worked? A. That is the way it worked. [805]

Q. And were Warner Bros.—Warner Bros. handled those matters verbally, isn't that right?

A. To the best of my recollection, yes, sir.

Q. And would that be true also with regard to United Artists?

(Testimony of Bert Pirosh.)

A. I am pretty sure that they were handling it that way at that time.

Q. Now, I would like to have you go through with me—I have some bid letters here and I would like to have you go through with me some of these. I don't propose to impose on the court or jury's time to go through all of these, but if you will start with those, Mr. Pirosh.

I have tried to make a summary here and I may have missed some or I may have gotten some incorrectly, but if you will follow along with me, and starting with the month of April, and I think you will find the earliest letter on the bottom of that particular packet. A. Yes.

Q. Will you state whether or not you submitted a bid for an RKO picture on April 3rd for the 7-day availability in April?

A. Yes, for the picture—

The Court: April 3rd of what year?

Mr. Johnston: 1950.

The Witness: With the picture Cinderella, we made an [806] offer.

Q. (By Mr. Johnston): And on April 10th, did you submit a bid to MGM for two pictures on the 7-day availability—I think they are Yellow Cab and Side Street, is that right?

A. Yellow Cab Man.

Q. And Side Street? A. That is correct.

Q. Now, on April 12, 1950, did you submit a bid to MGM on a picture called, I believe, Outriders? A. Yes, we did.

(Testimony of Bert Pirosh.)

Q. And on April 12th, that was for the same availability in the Westchester-Inglewood area?

A. For the 7-day availability.

Q. 7-day availability?

A. That is correct, sir.

Q. Now, on April 12, 1950, did you submit a bid to MGM for a picture called, I believe it is Please Believe Me. Do you find that there?

A. Yes. I made an offer at the Academy Theatre for the 7-day availability.

Q. Now, on April 25, 1950, did you submit a bid on an MGM picture, I think it was The Reformer and The Redhead, if I can read my writing.

A. Yes, we made an offer for The Reformer and The Redhead at our Fox Theatre in Inglewood.

Q. For the 7-day availability?

A. 7-day availability, yes.

Q. All of these questions I am asking you have reference to 7-day availability unless in checking over that list I have picked up some that were for a later availability, so if I have, will you correct me?

A. Yes, sir.

Q. Now, on April 25, 1950, did you submit a bid to RKO for the picture The Capture?

A. Yes. I made an offer at the Academy Theatre.

Q. And on May 1, May 1st, did you submit a bid for the MGM picture Shadow On The Wall?

A. Yes, I did, at the Academy Theatre.

Q. And on May 8th, did you submit a bid to

(Testimony of Bert Pirosh.)

RKO on a picture called Wagon Master, I believe it is?

A. Yes. On May 8th we made an offer on Wagon Master at the Fox Theatre.

Q. And on May 15th, did you submit a bid to Universal on the picture Comanche Territory?

A. On May 15, 1950, I made an offer for the Academy Theatre.

Q. Now, on May 15th also of 1950, did you submit a bid to Paramount on a picture called No Man of Her Own?

A. Yes. I made an offer for the picture at our Fifth Avenue Theatre. [808]

Q. And on May 18th, did you make an offer to RKO for a picture entitled Tarzan And The Slave-girl?

A. Yes, for the Fox Theatre.

Q. And on May 22nd, did you make an offer on a Columbia picture called No Sad Songs For Me?

A. Yes. I made an offer for the picture in the Academy Theatre.

Q. And on May 29th, did you submit a bid to Paramount for a picture entitled The Eagle and the Hawk?

A. Yes, Eagle and the Hawk for the Fox Theatre.

Q. Now, in June of 1950, on the 2nd day of June, 1950, did you submit a bid to Universal on the picture Sierra?

A. I did, for the Fifth Avenue Theatre.

Q. And in June of 1950, on the 5th day of June,

(Testimony of Bert Pirosh.)

did you submit a bid to RKO for a picture called Secret Fury?

A. I made an offer for the Fox Theatre.

Q. And on the same date did you submit a bid to Universal for the picture called Spy Hunt?

A. At the Academy Theatre.

Q. On June 12, 1950, did you submit a bid to Eagle-Lion for a picture called The Torch?

A. Yes, for the Academy Theatre.

Q. And on June 15, 1950, did you submit a bid to MGM for the picture Annie Get Your Gun?

A. Yes. I made an offer for the Academy Theatre. [809]

Q. And on June 19th, did you submit a bid to Universal for the picture Peggy?

A. Yes, for the Academy Theatre.

Q. And on June 19th, did you submit a bid to Columbia for a picture called Kill The Umpire?

A. At the Fifth Avenue Theatre.

Q. And on June 26th, 1950, did you submit an offer to Universal for Curtain Call At Cactus Creek?

A. At the Academy Theatre.

Q. And on June 26th, did you submit a bid to RKO for the picture White Tower?

A. At the Academy Theatre.

Q. And on June 26th, did you submit a bid to MGM or Loew's for the picture called Crisis?

A. At the Fifth Avenue Theatre.

Q. And on June 26th, the same date, did you submit a bid to MGM for a picture called Father of the Bride?

A. Academy Theatre.

(Testimony of Bert Pirosh.)

Q. Now, on June 29th, did you submit a bid to RKO for a picture called *The Woman On Pier 13*?

A. At the Academy Theatre.

Mr. Johnston: Your Honor, I suggest we stop here. We are through with the month of June.

The Court: Yes. The way we are going, we wouldn't be able to complete that list before time to take a recess. [810]

Ladies and gentlemen of the jury, we are about to take another recess, and again it is my duty to admonish you not to discuss this case with anyone nor permit anyone to discuss it with you. You are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition, we will now be in recess until 2:00 o'clock this afternoon.

(Whereupon at 12:00 o'clock noon, a recess was had until 2:00 o'clock p.m. of the same date.) [811]

Wednesday, July 18, 1956, 2:00 P.M.

The Court: Is it stipulated the jury is present in the box?

Mr. Johnson: So stipulated, your Honor.

Mr. Corinblit: So stipulated.

The Court: You may proceed.

BERT PIROSH

the witness on the stand at the time of the recess, having been previously duly sworn, was examined and testified further as follows:

(Testimony of Bert Pirosh.)

Cross Examination

Q. (By Mr. Johnston): I think this morning, Mr. Pirosh, we had gone through the month of June with respect to these bid letters, if I remember correctly. I will ask you to put before you the group of letters starting with July 1950.

Now, on July 5, 1950, did you submit a bid to Paramount on the picture *My Friend Irma Goes West*?

A. Yes, in the Academy Theatre.

Q. And on June 12, 1950, did you submit a bid for the 7 day availability in the Inglewood-Westchester area to MGM on three pictures, *The Skipper Surprised His Wife*, *Stars in My Crown*, and *Duchess of Idaho*? [812]

A. Yes, in the Fifth Avenue Theatre.

Q. Now, I notice in reviewing these letters a withdrawal on July 19th on a bid that you had made to Universal for this *Cactus Creek* thing—I have forgotten the complete title of it. Let's see if you can find that.

A. I am looking for it. Yes, sir, I have it.

Q. In a mode of distribution of pictures pursuant to bidding, it is necessary for you as an exhibitor, not knowing whether you are going to be awarded a bid or not, to sometimes bid for the same play dates, is it not?

A. Frequently we must make offers on several pictures which are available on the same dates.

Q. And the reason for that is you don't know

(Testimony of Bert Pirosh.)

whether in any particular instance you are going to get a bid or you are not going to get a bid?

A. You don't know when you make the bid if you are going to get any of the pictures.

Q. So then you sometimes find yourself in a situation, do you not, of having two pictures available at the same time, because you have been awarded two bids, isn't that right?

A. Well, that would be possible, but generally if we were awarded a picture for a certain availability and we had previously made an offer on another picture for that same availability, after we received one picture, we would then withdraw our offer for the picture which had not yet been awarded. [813]

Q. I see. So that I have noticed going through those letters in front of you certain instances of withdrawals of bids, and the reason for those withdrawals, generally speaking, is just what you have stated now, is that right? A. Yes, sir.

Q. On July 12, 1950, you submitted a bid to MGM for three pictures, Happy Years, Duchess of Idaho, and Mystery Street, is that right?

A. At our Academy Theatre.

Q. On July 13, 1950, you submitted a bid to Universal for the Picture Winchester .73, is that right? A. At the Academy Theatre.

Q. On July 17 you submitted a bid to Columbia for the picture Rogues of Sherwood Forest, is that right?

(Testimony of Bert Pirosh.)

A. July 17? Yes, sir. We submitted an offer at our Academy Theatre.

Q. Now, during this period of time, Mr. Pirosh, I am speaking of the year 1950-51, what was the, I should say ranking or desirability of Columbia pictures, generally speaking, from your standpoint as an exhibitor?

A. Well, Columbia in general had fewer good box-office pictures, fewer pictures that the public wanted to see, than companies like Metro or Paramount or Warner Bros. I think that they spent a lot less on their overall production than the other companies did. [814]

Q. Now, with respect to Columbia during this period and perhaps it is also true with respect to certain other distributors, if, we will say, Columbia did not receive satisfactory offers in response to its solicitation for bids, what would it then do?

Mr. Corinblit: I object to that as calling for the witness' conclusion as to what Columbia would do.

Q. (By Mr. Johnston): With respect to your own company?

The Court: It is what would you do.

Q. (By Mr. Johnston): What would you do with respect to Columbia product which had been first sent out on bids and then later negotiated for by you?

A. Well, if I should find myself in the position, which we frequently did, of not having received the good pictures we had made bids on for a certain date, and if Columbia had an inferior pic-

(Testimony of Bert Pirosh.)

ture available at that time, which was not yet sold to the other theatres, we would attempt to buy the picture for our theatre through ordinary negotiations.

Q. Now, in some of those situations, in purchasing film or licensing film from Columbia, you knew that Columbia previously had tried to sell that picture on a bidding basis, isn't that right?

A. That is right.

Q. And then being unable to do so, they tried to sell [815] it anyway they could, isn't that right?

A. Well, I suppose that is what they did. And if we didn't have anything better to play in our theatre, we had to take what we could get.

Q. Now on July 17, 1950, did you submit a bid to Eagle-Lion for the picture Jackie Robinson Story?

A. Yes. At our Academy Theatre.

Q. In Inglewood? A. In Inglewood.

Q. You understand, Mr. Pirosh, that all of these bids I am talking about have reference to the Inglewood area?

A. Also on the 7-day availability.

Q. That is right. Now, on July 17, 1950, did you submit a bid on the Paramount picture Lawless?

A. Yes. We submitted an offer for the Lawless at our Academy Theatre in Inglewood.

Q. And on July 18th, you submitted a bid to Columbia for the picture 711 Ocean Drive?

A. That is correct, at our Fox Theatre.

(Testimony of Bert Pirosh.)

Q. And on July 24th, you submitted a bid to MGM for the picture Three Little Words?

A. Yes. We made an offer at our Academy Theatre in Inglewood.

Q. And on July 31st you submitted an offer to Paramount [816] to bid on the picture called Furies, is that right?

A. Yes, at the Fox Theatre.

Q. Now, going to the month of August, August 1, 1950, you submitted a bid to Universal for the picture entitled Abbott and Costello in the Foreign Legion?

A. Yes, sir, at our Academy Theatre.

Q. And on August 4th you submitted a bid to RKO for the picture entitled Treasure Island?

A. Yes, sir, at the Academy Theatre.

Q. And on August 6th, a bid was submitted by you to Eagle-Lion for the picture Destruction at Noon, I believe is the way I have it written here.

A. No, that is Destination Moon.

Mr. Mitchell: All the same.

The Witness: We submitted an offer at our Academy Theatre.

Mr. Johnston: I had better take lessons in penmanship or get some glasses, one or the other.

Mr. Corinblit: Practically the same thing.

Q. (By Mr. Johnston): Now, August 11, 1950, Mr. Pirosh, did you submit a bid to Eagle-Lion for the picture called Eye Witness?

A. Yes, at our Academy Theatre.

Q. And on August 16th, did you submit a bid to

(Testimony of Bert Pirosh.)

MGM for two pictures, *Lady Without a Passport* and *Summer Stock*? [817]

A. Yes, both at our Academy Theatre.

Q. And on July 21st, did you submit a bid to Universal for the picture, I believe it is *Desert Hawk*.
A. August 21st?

Q. August 21st, yes, pardon me.

A. Yes.

Q. And August 28th, did you submit a bid to Columbia for the picture entitled *In a Lonely Place*?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on August 29th, you submitted a picture to Paramount—you submitted a bid to Paramount, did you not, for the picture entitled *Sunset Boulevard*?

A. At our Academy Theatre.

Q. Now, I wish you would look at the same group of papers you have been holding in your hand there, and look to a document which is dated August 18, 1950, I believe.

Mr. Johnston: Your Honor, at this time I should like to offer into evidence the document I have referred to, together with all of these bid letters, part of which I have been reading, as the defendant Fox's first in order.

The Court: May be received.

The Clerk: Is that one that you have on this list?

Mr. Johnston: No.

(Testimony of Bert Pirosh.)

The Clerk: I have a listing of Twentieth Century-Fox.

Mr. Johnston: It isn't on the list. [818]

The Court: What is the number, then?

Mr. Johnston: It will have to be assigned a number independently of that list, your Honor.

Mr. Corinblit: These are one of the joint plaintiff and defendant exhibits.

Mr. Johnston: Have you marked them, Mr. Corinblit?

Mr. Corinblit: I don't believe they have been marked.

The Clerk: Do you have one there?

Mr. Johnston: I have them right here.

The Clerk: Is that going to become one of these exhibits? There are three defendants on here, or do you want it as a separate exhibit of Fox?

Mr. Johnston: You can make it a separate exhibit of Fox if you wish, or the Fox defendants, however you wish to designate it.

The Clerk: Twentieth Century-Fox National Theatre Exhibit B in evidence.

(The exhibit referred to was marked Twentieth Century-Fox National Theatre Exhibit B, and received in evidence.) [819]

Mr. Johnston: Now, with the court's permission, I should like to read the particular document I referred to a moment ago.

This is a document which bears the typewritten signature of Bert Pirosh. It is dated August 18, 1950, and reads as follows:

(Testimony of Bert Pirosh.)

"RKO has notified me that they are including the Paradise Theatre in the competitive bidding for the 7 day availability, Inglewood, California.

"They have, likewise, notified me that effective with the release of *Treasure Island* they are instituting competitive bidding for the 14 day availability in Inglewood.

"On both the 7 and 14 availabilities RKO is going to license one run only on a competitive bidding basis and are reserving the right to license a second run in the general competitive area embracing Inglewood to some theatre which is not in substantial competition with the highest bidder."

Mr. Corinblit: What is the date of that, counsel?

Mr. Johnston: That is August 18, 1950.

Mr. Corinblit: And the bid letters in the group are all dated——

Mr. Johnston: July and August 1950, Mr. Corinblit.

Mr. Corinblit: Thank you. [820]

Q. (By Mr. Johnston): In September, 1950, September 1 of that year, did you submit—on September 6, I beg your pardon, Mr. Pirosh, did you submit a bid to Universal for the picture *Louisa*?

A. Yes, at the Academy Theatre.

Q. On September 6 of the same year, did you submit a bid to RKO for the picture *Our Very Own*?

A. At the Academy Theatre.

Q. And on September 18, 1950, did you submit a bid for an MGM picture, *Toast of New Orleans*?

A. At the Fifth Avenue Theatre.

(Testimony of Bert Pirosh.)

Q. And on August 18 did you likewise submit a bid to MGM on the picture *A Life of Her Own*?

A. That was September 18.

Q. You are right. September 18, 1950.

A. Yes, on September 18, 1950, we submitted an offer to Metro for *A Life of Her Own* at our Academy Theatre.

Q. And on September 19, did you submit a bid to Universal for the picture called *Saddle Tramp*?

A. Yes, at our Academy Theatre.

Q. On September 19, did you submit a bid to MGM for three pictures, *Toast of New Orleans*, *Devil*—you will have to help me with that one, if you can find it.

A. *Devil's Doorway*.

Q. *Devil's Doorway*, and I think the third one is *Right [821] Cross*.

A. One letter seems to be misfiled here, Mr. Johnston. We did make offers on September 19 for *Right Cross* and *Devil's Doorway*. The other letter referred to another town and is apparently misfiled.

Q. So in the Inglewood area you did make on—what date?

A. September 19.

Q. September 19, 1950, offers for the two pictures, *Devil's Doorway* and *Right Cross*.

A. *Devil's Doorway* and *Right Cross*, at the Fox Theatre, that's right.

Q. And on September 22, you made a bid on the RKO picture *Born To Be Bad*, is that right?

A. At the Fifth Avenue Theatre.

Q. And on September 27, you made an offer on

(Testimony of Bert Pirosh.)

the Universal picture entitled Shakedown, is that right? A. At the Academy Theatre.

Mr. Johnston: Now, I should like to offer as Fox C the group of documents just referred to.

Mr. Corinblit: May I just go through them before your Honor rules?

Mr. Johnston: Certainly. I have the purpose of reading a document which is dated September 11 in that group, Mr. Corinblit. [822]

Mr. Corinblit: You say September 11?

Mr. Johnston: I believe that is the date.

Mr. Corinblit: No objection.

The Court: It may be received in evidence.

The Clerk: Fox Exhibit C.

(The exhibit referred to was received in evidence and marked as Defendant Fox' Exhibit C.)

Mr. Corinblit: May I have the dates covered by the group again?

Mr. Johnston: The tab on the front of it, Mr. Corinblit, says 1950, third quarter, September.

Mr. Corinblit: Thank you.

Mr. Johnston: With the court's permission, I should like to read a document in this group which is dated September 11, 1950, over the typewritten signature of Bert Pirosh.

"Metro has advised me that in the future the Paradise Theatre, Los Angeles, California, will be included in the bidding with the La Tijera Theatre, Los Angeles, California, and the first run theatres in Inglewood, California."

(Testimony of Bert Pirosh.)

Q. Now, calling your attention to the last phrase in this document I have just read, the phrase, "the first run theatres in Inglewood, California," it was your understanding, was it not, that that meant the theatres playing on the 7 day availability in Inglewood? [823] A. That is correct.

Q. Now, if you will go to the file containing the October letters, Mr. Pirosh, on October 4th you submitted a bid to Paramount for the picture called *Fancy Pants*?

A. That is correct, at our Academy Theatre in Inglewood.

Q. And on October 13, you submitted a bid on the MGM picture *Next Voice You Hear*?

A. At the Fifth Avenue Theatre.

Q. And on October 13, you submitted a bid on the RKO picture *Walk Softly, Stranger*?

A. At our Academy Theatre.

Q. And on October 23, you submitted a bid on the Universal picture *Wyoming Male*?

A. At the Fox Theatre.

Q. On the 24th of that month, October, you submitted a bid to Paramount for the picture entitled *Union Station*? A. At the Fox Theatre.

Q. And on the 31st of October you submitted a bid to Universal on a picture called *Woman On The Run*? Do you find that one?

A. I am looking. Yes, at our Academy Theatre.

Q. And on October 31 you submitted a bid to MGM on the picture entitled *The Miniver Story*?

A. At our Fox Theatre. [824]

(Testimony of Bert Pirosh.)

Q. And on October 31st, you submitted a bid to MGM on the picture—I believe it is *To Please A Lady*?

A. That is correct. That was at the Fifth Avenue Theatre.

Q. And in November, 1950, November 8, you submitted a bid to MGM for the picture called *King Solomon's Mines*?

A. We sure did. At the Fifth Avenue Theatre.

Q. What did you offer as terms?

A. We offered guaranteed minimum film rental of \$5,100 for the picture, and did very well when it played.

Q. Did you on November 9, 1950, submit a bid for the Universal picture called *Deported*?

A. Yes, we did, at our Academy Theatre.

Q. On November 10, 1950, did you submit a bid to Columbia for the picture *The Last of The Buccaneers*?

A. Yes, sir, at our Academy Theatre.

Q. On November 14, 1950, did you submit a bid to Universal for the picture called *Kansas Raiders*?

A. Yes, at our Academy Theatre.

Q. On November 20, did you submit a bid to Eagle-Lion for the picture called *High and something or other*—I don't know the rest of it. Is it *High And Lonesome*?

A. *High And Lonesome*, at our Academy Theatre.

Q. On November 20, 1950, did you submit a bid on a Paramount picture called *Copper Canyon*?

A. At our Academy Theatre.

(Testimony of Bert Pirosh.)

Q. And on November 21 did you submit a bid on the MGM picture Dial 1119?

A. Yes, sir, at the Fox Theatre.

Q. At the Fox Theatre in Inglewood?

A. Fox Theatre in Inglewood.

Q. On November 27, 1950, did you submit a bid on an RKO picture called Mad something—it looks like Mad Wednesday?

A. Mad Wednesday is correct. At the Academy Theatre.

Q. On November 27, 1950, did you submit a bid on a Universal picture called Milk Man?

A. Yes, sir, at our Academy Theatre. [826]

Q. I believe that bid was withdrawn. If you find a withdrawal, you might call my attention to it as we go through here.

Now, on December 13, 1950, did you submit a bid on the Paramount picture Let's Dance?

A. Yes, at the Academy Theatre.

Q. And on December——

A. And I notice that on December 4, 1950, we withdrew the offer for the Milkman at the Academy Theatre.

Q. On December 27, 1950, you submitted a bid on the Universal picture called Frenchie, did you not? A. Yes, at the Academy Theatre.

Q. And on December 27, 1950, you submitted a bid on the MGM picture called Pagan Love Song?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. Now, in the year 1951, on January 2nd, did

(Testimony of Bert Pirosh.)

you submit a bid on the Paramount picture called Mr. Music?

A. Yes, sir, at the Academy Theatre.

Q. We are still talking about Inglewood, and we are still talking about the 7-day availability in Inglewood. You understand that?

A. I am. Yes, sir.

Q. There are some bids in those letters before you for the 14-day availability included, which we haven't discussed, are there not? [827]

A. There are a great number.

Q. You have seen them as you have gone through them?

A. There are a great number of bids for 14-day availability.

Q. Now, on January 4, 1951, did you submit a bid for the Loew's picture Mrs. O'Malley and Mr. Malone? A. Yes, sir, at the Academy Theatre.

Q. And on January 8, 1951, did you submit a bid for the RKO picture called Outrage?

A. At our Academy Theatre.

Q. And on January 8, 1951, you submitted a bid for the Eagle-Lion picture called Rogue River?

A. Yes, at the Academy Theatre.

Q. And on January 9, 1951, you submitted a bid for the Metro picture called Ground For Marriage?

A. Yes, at the Fifth Avenue Theatre.

Q. And on January 9, 1951, you submitted a bid for the picture called Watch The Birdie, I guess.

A. That is right.

Q. That is a Metro picture, is that right?

(Testimony of Bert Pirosh.)

A. Watch The Birdie, yes. That was at the Academy Theatre.

Q. Then on January 3, 1951, you submitted a bid for the Paramount picture called Branded?

A. Yes, at the Academy Theatre. [828]

Q. January 23, 1951, you submitted a bid for the Metro picture entitled Kim?

A. At the Fifth Avenue Theatre.

Q. And on January 29th, you submitted a bid for the Metro picture The Magnificent Yankee, is that right?

A. That is correct, at the Academy Theatre.

Q. January 29th, you submitted a bid for the Universal picture Harvey, is that right?

A. Yes, at the Academy Theatre.

Q. And on February 5th, you submitted a bid for the Paramount picture At War With The Army, is that right?

A. At the Academy Theatre and also on January 29th we made an offer for Dark City from Paramount at the Academy Theatre.

Q. I see. And on February 9, 1951, you submitted a bid for the Metro picture Cause For Alarm, did you not?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on February 15, 1951, you submitted a bid for the Paramount picture At War With The Army?

A. At the Academy Theatre.

Q. February 19th, you submitted a bid for the RKO picture The Company She Keeps?

A. Yes, at the Academy Theatre.

(Testimony of Bert Pirosh.)

Q. February 26, 1951, you submitted a bid for the Metro picture Vengeance Valley, did you not?

A. February 26th—yes, at the Fifth Avenue Theatre.

Q. And on February 26, 1951, you submitted a bid for the RKO picture Cry Danger?

A. At the Fifth Avenue Theatre.

Q. And on February 26th, you also submitted a bid for the Universal picture called Tomahawk?

A. At the Academy Theatre.

Q. February 27, 1951, you submitted a bid for the Paramount picture called The Great Missouri Raid?

A. At the Academy Theatre.

Q. February 27, 1951, you submitted a bid for the RKO picture called Gambling House?

A. At the Academy Theatre.

Q. Now, may I see, Mr. Pirosh, that group that you have just gone through.

A. There is another group.

Q. I will look at both of them.

A. We are down to here on this one.

Q. All right. I should like to offer the group of letters starting with a letter dated January 2, 1951, and ending with a letter dated February 15, 1951, as the defendant Fox's next in order.

And I intend to, if the evidence is received, read the letter dated February 14th, Mr. Corinblit, the memorandum dated February 14th. [830]

(Handing document to Mr. Corinblit.)

Mr. Corinblit: No objection.

The Court: It may be received in evidence.

(Testimony of Bert Pirosh.)

The Clerk: Fox's Exhibit D in evidence.

(The exhibit referred to was marked Fox's Exhibit D, and received in evidence.)

Mr. Johnston: Now, if I may, your Honor, I should like to read the document which is dated February 14, 1951, which is a part of Exhibit D.

"Paramount has notified me that effective with At War With The Army, the Centinela Drive-In and the Century Drive-In will be given the privilege of negotiating competitively for the 7 and 14-day availabilities in the Inglewood area."

Q. Can you point out where those two theatres are, Mr. Pirosh. Will you come down here and point them out?

A. Here is the Centinela and here is——

Q. Will you stand over here so the jury can see what you are doing?

The Court: I can't hear you.

Q. (By Mr. Johnston): Just point out to me where the Centinela and the Century Drive-Ins are?

A. This is the Centinela Drive-In and this is the Century Drive-In.

Q. Thank you. [831]

The Court: How far are those drive-ins from Inglewood?

The Witness: The Centinela Drive-In I would say is approximately three miles from downtown Inglewood.

The Century Drive-In is perhaps a mile or a mile and a half from there, and even closer to the Academy and Fifth Avenue Theatres. Here is the Cen-

(Testimony of Bert Pirosh.)

tury Drive-In. Here is the Academy Theatre, and here is downtown Inglewood.

The Court: Would you consider those two drive-ins in substantial competition with the Fox theatres in that area?

The Witness: Yes, sir, and they still are.

Q. (By Mr. Johnston): You may resume the stand.

Now, Mr. Pirosh, we will get to this other document which I have in mind in just a moment.

Starting with the month of March and the year 1951, did you submit a bid to Paramount on March 12th for a picture called September Affair?

A. Yes, at the Academy Theatre.

Q. And on March 12, 1951, did you submit a bid on a picture Never A Dull Moment, an RKO picture?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on March 12, 1951, did you submit a bid for the Metro picture Inside Straight?

A. At the Academy Theatre.

Q. And on March 12th, did you submit a bid for the Metro picture Father's Little Divident? [832]

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on March 12th, did you submit a bid for the Metro picture Royal Wedding?

A. Yes, sir, at the Fox Theatre.

Q. And on March 14th, did you submit a bid for the Eagle-Lion picture Perhistoric Woman?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on March 15th, 1951, did you submit a bid for the RKO picture Never A Dull Moment?

(Testimony of Bert Pirosh.)

A. Yes, sir, at the Academy Theatre.

Q. And on March 19th, did you submit a bid for the RKO picture *Vendetta*?

A. At the Academy Theatre.

Q. And on March 19th, did you submit a bid for the Paramount picture *Redhead And The Lady*?

A. *Redhead And The Cowboy* it should be. At the Academy Theatre.

Q. Did you submit a bid on March 20th for the Universal picture *Bedtime For Bonzo*?

A. Yes, at the Academy Theatre.

Q. And on March 27, 1951, did you submit a bid for the Universal picture *Target Unknown*?

A. At the Academy Theatre.

Q. And on March 27, 1951, you submitted a bid for the Paramount picture *The Mating Season*?

A. Yes, at the Academy Theatre.

Q. And on March 27, 1951, did you submit a bid for the United Artists picture *Sound of Fury*?

A. That is March 30th, Mr. Johnston.

Q. March 30th? A. Yes, at the Fox Theatre.

Mr. Johnston: May I have the group of letters just previous to that or have you already given that to me?

The Witness: Yes.

Mr. Johnston: I should like to offer in evidence the group of documents starting with the date of February 19, 1951, and ending with the date of March 30, 1951, your Honor, as defendant Fox's next in order.

Mr. Corinblit: May I see them, please?

(Testimony of Bert Pirosh.)

Mr. Johnston: Certainly. I beg your pardon. I have reference to the document——

Mr. Corinblit: Which date?

Mr. Johnston: February 19th, starts at February 19th and ends March 20th, I believe, or March 30th. [834]

Mr. Corinblit: No objection.

The Court: In evidence.

The Clerk: Fox Exhibit E.

(The exhibit referred to was received in evidence and marked as Defendant Fox's Exhibit E.)

Mr. Corinblit: Could we have the dates again, counsel? I missed them. I am sorry.

Mr. Johnston: The dates, Mr. Corinblit, of this group which has been received in evidence, Defendants' Exhibit E, start with February 19, 1951, and end with March 30, 1951.

Mr. Corinblit: Thank you.

Mr. Johnston: I would like to read, if I may, your Honor, a document dated February 19, 1951, which comprises a part of Exhibit E.

"RKO has notified me that effective immediately the Century Drive-In Theatre will be given the privilege of bidding for the 7 and 14 day availabilities in Inglewood, California.

"Bert Pirosh"

Q. Now, turn, if you will, to the group of documents starting in April, 1951, Mr. Pirosh, and on April 2, 1951, you submitted a bid on the RKO picture Payment On Demand, did you not?

(Testimony of Bert Pirosh.)

A. Yes, sir, at our Fifth Avenue Theatre. [835]

Q. And on April 2, 1951, you submitted a bid on the Paramount picture *Samson And Delilah*?

A. At our Fifth Avenue Theatre.

Q. April 5, 1951, you submitted a bid on the Universal picture *Abbott and Costello*—do something or other.

A. *Meet The Invisible Man*.

Q. Yes. A. At our Fox Theatre.

Q. On April 9, 1951, you submitted a bid on the Columbia picture *Al Jennings of Oklahoma*.

A. Yes, sir, at the Academy Theatre.

Q. On April 10, 1951, you submitted a bid on the Paramount picture *Lemon Drop Kid*.

A. At the Academy Theatre.

Q. On April 11, 1951, you submitted a bid on the Universal picture *The Groom Wore Spurs*.

A. At the Academy Theatre.

Q. On April 11, 1951, you submitted a bid on the Columbia picture *Valentino*.

A. At the Fifth Avenue Theatre.

Q. On April 26, 1951, you submitted a bid for the RKO picture *The Thing From Another World*.

A. At our Academy Theatre.

Q. On the 27th you submitted a bid for the Universal picture entitled *Up Front*. [836]

A. At the Academy Theatre.

Q. On May 3, 1951, you submitted a bid for the Columbia picture entitled *Manhunt*.

A. At the Academy Theatre.

(Testimony of Bert Pirosh.)

Q. And on May 3, 1951, you submitted a bid for the Columbia picture *Fury of The Congo*.

A. At the Fifth Avenue Theatre.

Q. On May 7 you submitted a bid for the United Artists picture called *Second Woman*.

A. At the Fifth Avenue Theatre.

Q. On May 9, 1951, you submitted a bid for the Columbia picture entitled *Santa Fe*.

A. At the Fifth Avenue Theatre.

Q. And on May 9, 1951, you submitted a bid for the Universal picture *Double Cross Bones*?

A. At the Fifth Avenue Theatre.

Q. On May 9, 1951, you submitted a bid for the Universal picture entitled *Air Cadet*.

A. At the Academy Theatre.

Q. On May 10, 1951, you submitted a bid for the Republic picture *Fighting Coast Guard*.

A. Yes, sir, at the Academy Theatre.

Q. And on May 14, 1951, you submitted a bid for the RKO picture *My Forbidden Past*.

A. At the Fifth Avenue Theatre. [837]

Q. On May 14, 1951, you submitted a bid for the Columbia picture *The Brave Bulls*.

A. At the Fifth Avenue Theatre.

Q. And on May 14, 1951, you submitted a bid for the Columbia picture *He's A Cockeyed Wonder*.

A. At the Fifth Avenue Theatre.

Q. On May 15, 1951, you submitted a bid for the picture *Go For Broke*.

A. Yes, sir, at the Fifth Avenue Theatre.

Q. On May 29, 1951, you submitted a bid for

(Testimony of Bert Pirosh.)

the Paramount picture Appointment For Danger.

A. Yes, sir, at the Academy Theatre.

Q. On May 31, you submitted a bid for the Universal picture Katie Did It.

A. At the Academy Theatre.

Q. On June 4th you submitted a bid for the Metro picture entitled Great Caruso.

A. Yes, sir, Fifth Avenue Theatre.

Q. And on June 6, 1951, you submitted a bid for the United Artists picture—I can't read this. In fact, on that date you submitted three bids to United Artists, did you not?

A. Yes, sir. Fabiola at the Academy Theatre, The Hoodlum at the Academy Theatre, and Circle of Danger at the Academy Theatre.

Q. On June 11, you submitted a bid to Paramount for [838] The Last Outpost.

A. Yes, sir, at the Academy Theatre.

Q. On June 15 you submitted a bid to RKO for the picture Best of The Bad Men.

A. At the Fifth Avenue.

Q. On June 18 you submitted a bid to Paramount for the picture entitled Trio.

A. Yes, sir, at the Fifth Avenue Theatre.

Q. On June 19th, you submitted a bid to Universal, one for the picture Apache Drums and one for the picture Hollywood Story, is that right?

A. Yes, sir, both at the Academy Theatre.

Q. On June 22nd you submitted a bid to RKO for the picture called Tarzan's Peril.

A. Yes, sir, Fox Theatre.

(Testimony of Bert Pirosh.)

Q. And on June 26 you submitted a bid to Paramount for the picture called *Dear Brat*.

A. At the Fifth Avenue.

Q. On June 28 you submitted a bid to Universal for the picture called *The Prince Who Came Back*.

A. At the Fifth Avenue Theatre.

Q. On July 6, 1951, you submitted a bid to MGM for the picture—I believe it is called *Night Into Morning*, is that right?

A. Yes, sir, at the Academy Theatre. [839]

Q. On July 17, 1951, you submitted a bid to Paramount for a picture called *Passage West*, is that right?

A. That's right, at the Fifth Avenue Theatre.

Q. And on July 17, 1951, you submitted a bid to Universal for the picture called *Coming Round The Mountain*, is that right?

A. At the Academy Theatre, that's right.

Q. On July 17, you submitted a bid to RKO for the picture entitled *Alice In Wonderland*?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. On July 20, 1951, you submitted a bid to Columbia for the picture called *Lorna Doon*?

A. July 20th?

Q. That is what my notes show. Maybe I am in error.

A. That is correct, at the Fifth Avenue Theatre, and also *Mask of The Avenger* at the Academy Theatre.

Q. On the same date?

A. July 20, 1951.

(Testimony of Bert Pirosh.)

Q. On July 23, 1951, did you submit a bid for the picture *Cyrano de Bergerac*?

A. That was July 23, 1951?

Q. Yes, sir.

A. *Cyrano de Bergerac*, at the Academy Theatre in Inglewood.

Q. July 24, 1951, did you submit a bid for the UA picture [840] called *Oliver Twist*?

A. At the Fifth Avenue Theatre.

Q. And on July 25, did you submit a bid to Paramount for the picture entitled *Pekin Express*?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. July 30, 1951, did you submit a bid to Universal for the picture called *Cattle Drive*?

A. At the Academy Theatre.

Q. On July 30, 1951, did you submit a bid to Paramount for the picture called *War Path*?

A. At the Fifth Avenue Theatre.

Q. On July 31, 1951, did you submit a bid to Paramount for the picture *That's My Boy*?

A. At the Academy Theatre.

Q. On August 6, 1951, did you submit a bid to United Artists for—I think it is either *Pair In A Jeep* or *Four In A Jeep*.

A. *Four In A Jeep*, yes, sir, at the Academy Theatre.

Q. On August 10, 1951, did you submit a bid to Paramount for a picture *Here Comes The Groom*?

A. Yes, sir, at the Academy Theatre.

Q. And on August 20, 1951, did you submit a bid to Paramount for the picture *Big Carnival*?

(Testimony of Bert Pirosh.)

A. At the Academy Theatre.

Q. On August 24, 1951, did you submit a bid to Universal [841] for the picture Francis Goes to The Races?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on August 29, 1951, did you submit a bid to RKO for the picture Kontiki?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. August 31, 1951, did you submit a bid to RKO for the picture Hard, Fast and Beautiful?

A. At the Academy Theatre.

Q. Now we are down to the last month, anyway, I think. On September 11, 1951, did you submit a bid for the RKO picture His Kind of A Woman—something like that—His Kind of A something.

A. His Kind of A Woman on September 11th—no, we did not make an offer at that time for it.

Q. Did you submit a bid on September 10, 1951, for the United Artists picture Queen For A Day?

A. Yes, sir, at the Academy Theatre.

Q. And on September 24th did you submit a bid for the RKO picture Behave Yourself?

A. At the Fifth Avenue Theatre.

Q. And on September 24th did you submit a bid for the Paramount picture Rhubarb?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on September 24 did you submit a bid for the United Artists picture entitled New Mexico?

A. Yes, sir, at the Academy Theatre.

Q. And on September 24, 1951, did you submit a bid for the Republic picture Adventures of Cap-

(Testimony of Bert Pirosh.)

tain—somebody or other? A. Fabian.

Q. Adventures of Captain Fabian, is it?

A. Yes, sir, Adventures of Captain Fabian, at the Academy Theatre.

Q. On September 28, 1951, did you submit a bid for the MGM picture The People Against O'Hara?

A. Yes, sir, at the Fifth Avenue Theatre, and on September 24, 1951, we submitted an offer for another Republic picture called The Sea Hornet at the Academy Theatre.

Q. The what? A. Sea Hornet.

Mr. Johnston: Your Honor, I should like to offer the remaining groups of these letters which I have not heretofore offered as the Defendant's Fox next in order.

Mr. Corinblit: Do you want to offer them by groups?

Mr. Johnson: I think that would be the more orderly way of doing it.

Mr. Corinblit: I agree with you.

Mr. Johnston: Is there any objection to the offer? You have gone through these, I know. [843]

Mr. Corinblit: I would like to take a run through them, if I can.

Mr. Johnston: Certainly. I will defer my offer until after the recess.

The Court: Suppose we take the recess now and you can look at them and then offer them when we come in after recess.

Mr. Johnston: Very good your Honor.

The Court: Ladies and gentlemen of the jury

(Testimony of Bert Pirosh.)

we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition, we will now recess until 10 minutes after 3:00.

(Recess.) [844]

The Court: Is it stipulated the jury are present and in the jury box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Westbrook: So stipulated.

The Court: You may proceed.

Mr. Johnston: Your Honor, at this time I should like to offer in evidence as defendant Fox's next in order, exhibits lettered F through M, inclusive.

Mr. Corinblit: No objection.

The Court: They may be received.

(The exhibits referred to were marked Defendant Fox's Exhibit F through M, inclusive, and received in evidence.)

Mr. Johnston: I have a stipulation with Mr. Corinblit, if the court will be so good as to honor it, that if I desire or Mr. Corinblit desires, the originals may be withdrawn and photostats substituted.

The Court: The originals may be withdrawn and photostats may be substituted.

Mr. Johnston: Thank you.

Q. Now, in the group of documents that we have been going through this morning and this after-

(Testimony of Bert Pirosh.)

noon, Mr. Pirosh, in addition to the ones I specifically asked you about, there are in that group of documents which has just been received in evidence, a number of letters in which you state [845] in substance and effect that you do not desire to submit a bid on a particular picture.

What was the reason, Mr. Pirosh, that you advised the particular distributor in question as to that?

A. Well, there could have been at least two reasons.

I would not wish to make an offer on a picture which was a bad picture and which we felt we would lose money if we played it. Or it is possible that a number of them were because the theatres, all of our theatres, were already booked on the date on which the picture being offered was available, and if we already were booked we could not use the picture on its availability date.

Therefore, there would be no object in trying to buy it.

Q. Now, I wanted to ask you another question with reference to this group of letters we have been talking about, this group of documents, and that is that you did not receive the award of every picture that you submitted a bid on, isn't that right?

A. By no means.

A great many of the pictures we did not get.

Q. And is it your belief that those pictures went to some other exhibitor in the area?

Mr. Corinblit: Just a minute, your Honor. The question of belief, I think is immaterial.

(Testimony of Bert Pirosh.)

The Court: All right. Do you know where the pictures [846] went when you didn't get the bid?

The Witness: I knew at the time, yes, sir.

Q. (By Mr. Johnston): They went to other theatres in the Inglewood area, is that right?

A. Yes, sir. They were awarded by the distributor to another bidder, another theatre.

Q. And you were advised in some instances, were you, that the reason for that was because this other exhibitor had, or other theatre had submitted a better bid in the mind of the distributor than you had, is that right?

A. Well, I was advised in each instance that the picture had been awarded to one of the other theatres who was bidding and I assumed that it was because the distributor was of the belief that the other offer was better than the one I had made.

Mr. Corinblit: Your Honor, I move to strike the answer beginning with the word "I assumed," as a conclusion of the witness.

The Court: It may go out.

Q. (By Mr. Johnston): Now, Mr. Pirosh, earlier today we were talking about Warner Bros. and the method they had of licensing pictures in the Inglewood-Westchester area, which I believe you testified as different than that of some of the other distributors in that Warner Bros. did not have formal competitive bidding during the year '50 and '51, [847] is that right? A. That is right.

Q. Now, I am going to ask to have these marked——

(Testimony of Bert Pirosh.)

(Handing document to Mr. Corinblit.)

Mr. Johnston: I am going to offer in evidence a situation sheet or report for Warner Bros. for the season 1950 and one for the same company for the season 1951 as the defendants' next two exhibits in order.

Mr. Mitchell: These are not Warner Bros.' records.

Mr. Johnston: No, these are Fox West Coast records.

The Court: They may be received.

Mr. Corinblit: No objection.

The Clerk: Defendant Fox's Exhibits N and O in evidence.

(The exhibits referred to were marked Defendant Fox's Exhibits N and O, and received in evidence.)

Q. (By Mr. Johnston): I am going to show you, Mr. Pirosh, what have been marked—first, let us look at Exhibit N, which is what is called a situation report or sheet, is it not? A. Yes, sir.

Q. It is a record maintained by your company, Fox West Coast, is it? A. Yes, sir.

Q. And that record shows what?

A. Well, this particular one shows the performance of [848] the Warner pictures in our Inglewood theatres in the year 1950.

It shows the——

Q. It shows the pictures played, does it not, first of all?

A. Yes, and shows the title of the picture.

(Testimony of Bert Pirosh.)

Q. The date and it shows the picture played?

A. Yes, and the theatre and it shows the daily gross and weekly gross.

It shows the film rental paid and it shows the second feature and the film rental paid for the second picture; the cost of shorts and news and a profit and loss figure. [849]

Q. I am going to ask you to look at the two exhibits which have been marked N and O, if you will, Mr. Pirosh, and simply read off the title of the picture and the date it played on the 7 day availability in Inglewood.

The Court: And where it played. Don't you want the theatre it played in?

Q. (By Mr. Johnston): The theatre it played in and the date. These are all Warner Bros. pictures, are they not?

A. Yes, sir. The Flame and the Arrow played in the Academy in Inglewood August 16 to 22, 1950.

Daughter of Rosie O'Grady played in the Academy Theatre in Inglewood April 28, 1950, to May 6, 1950, nine days.

The Damned Don't Cry played in the Academy Theatre, opening May 29, 1950, for seven days.

Mr. Corinblit: What was the date of that again, please?

The Witness: Opened May 29, 1950, for seven days.

Colt .45 played in the Academy Theatre in Inglewood on the 7 day availability for seven days, June 18 to 24, 1950.

(Testimony of Bert Pirosh.)

Three Secrets played in the Academy Theatre, Inglewood, for 7 days, October 18 to 24, 1950.

Rocky Mountain played in the Academy Theatre in Inglewood for six days, November 1 to 6, 1950.

The Glass Menagerie played in the Academy Theatre [850] for seven days, November 15 to 21, 1950.

Breakthrough played in the Academy Theatre for seven days opening November 29, 1950—that would have been through December 5, 1950.

The West Point Story played in the Academy for 11 days, opening December 20, 1950, and closing its run December 30, 1950.

Lady Takes a Sailor played in the Academy Theatre for seven days, opening February 24, 1950. That would be through March 2nd.

Stage Fright played in the Academy Theatre for six days, April 15 to 20, 1950.

The Breaking Point played in the Fox Theatre, Inglewood, for eight days, October 4 to 11, 1950.

Highway 301 played in the Academy Theatre for 7 days, December 31, 1950, through January 6, 1951.

Q. Have you finished the situation sheet for 1950? A. Yes, sir.

Q. Will you turn then to Exhibit O and give the title of the Warner Bros. picture and the date it played on a 7 day availability in a Fox house in the Inglewood area.

A. All right. All we have on the sheet are the pictures that played in our theatres, in the Fox theatres.

Q. I understand that.

(Testimony of Bert Pirosh.)

A. Storm Warning played in the Academy Theatre 7 days, [851] February 14 to 20, 1951.

Strangers on a Train played in the Academy Theatre for 7 days, July 25, through 31, 1951.

Fort Worth played in the Fifth Avenue Theatre for 8 days, July 31, 1951, through August 7, 1951.

On Moonlight Bay played in the Academy Theatre for 7 days, August 15 to 21, 1951.

Captain Hornblower—I think the title was Captain Horatio Hornblower—played in the Academy Theatre for 12 days, opening September 2, 1951, through September 13, 1951.

Jim Thorpe played in the Academy Theatre for seven days, September 21 to 27, 1951.

Force of Arms played in the Fifth Avenue Theatre for nine days, October 3 through October 12, 1951.

Painting the Clouds played in the Academy Theatre for 7 days, October 17 to 23rd.

Q. You don't need to read anything after September 1951. If you have read all up to that date, that's all you need to read at this time.

A. All right. That's all there are for that date.

Mr. Johnston: I have no further questions, your Honor. [852]

Cross Examination

Q. (By Mr. Mitchell): Now, Mr. Pirosh, are you familiar with the manner in which the various distributors licensed their 7 day run or runs in the Inglewood area in 1950 and 1951?

(Testimony of Bert Pirosh.)

A. Yes. I was familiar with it.

Q. For instance, we have had testimony here about Loew's, that it licensed one 7 day run on a bid amongst the La Tijera, Fox Inglewood, United Artists, Academy, Fifth Avenue, and after the Paradise came into existence, the Paradise. Is that in accordance with your recollection? A. Yes, sir.

Q. Now, let's take Paramount. Will you explain to the jury how many 7 day runs Paramount offered in that area and how it went about selecting the theatres in which they would run?

Mr. Corinblit: Now, just a minute, your Honor. I object to the question insofar as it asks how Paramount made the selection of the theatres to be played as being without foundation. Mr. Pirosh would know Fox's point of view, but certainly not Paramount's.

Mr. Mitchell: He knows what went on in Inglewood, your Honor. He was an active bidder.

Mr. Corinblit: What went on is one thing, but what went on at Paramount is another thing. [853]

The Court: Read the question.

(Question read.)

The Court: Overruled, if you know.

The Witness: Yes, sir. Paramount did a lot of experimentation——

The Court: No, that is not the question. Answer the question. How many runs did Paramount authorize.

Mr. Mitchell: What he wants you to say is how

(Testimony of Bert Pirosh.)

they did it first, and how they did it second, if there was more than one way.

The Witness: Paramount for a considerable period, for some time during this period, drew an imaginary line through the Westchester-Inglewood competitive area and offered to license two runs on the 7 day availability, and they said that the theatres which were east of the imaginary line could bid for a run and the theatres that were west of this line could bid for a run. [854]

Q. So that there would be two 7-day runs in the Inglewood-Westchester area playing day and date?

A. That is correct.

The Court: Irrespective of competition?

The Witness: That is what Paramount tried to do.

Q. (By Mr. Mitchell): Was this by bidding in these respective areas with the imaginary line dividing them?

A. Yes, it was by bidding.

Q. All right. Now, we have two—we have Paramount offering two 7-day runs in the area to play day and date.

Now, which theatres did Paramount allow to bid for one of the runs?

A. Well, one of the runs was between the La Tijera Theatre, the Paradise Theatre, the Fox Theatre, the United Artists Theatre and possibly the Ritz Theatre was being offered a chance to bid.

Q. The Ritz was a small theatre in Inglewood?

A. Small, insignificant theatre.

For the other run Paramount was bidding among

(Testimony of Bert Pirosh.)

the Southside Theatre, Academy, the Fifth Avenue and I believe at one time *for* the Rio Theatre was bidding.

Q. All right. Just so we can understand what Paramount was doing down there, they offered these two day and date runs on a bid and suppose the Academy bids the highest in its area, it gets the run? [855] A. Yes.

Q. All right. Now, suppose the Paradise bids the highest in its area?

A. According to Paramount they would license the Academy and the Paradise to play day and date.

Q. Were you willing to play day and date in that manner? A. No.

Q. You wouldn't buy the picture?

A. I didn't want to buy the pictures because we considered the Paradise Theatre and the La Tijera Theatre and the United Artists and Fox in downtown Inglewood were competitive to the Academy Theatre.

Q. Let us take somebody like the Southside. Supposing in this western area which you say consisted of the Academy and the Rio and the Imperial and the Southside, suppose the Southside were the highest bidder under the Paramount plan and then suppose in its area that the Paradise was the highest bidder, would it be able to play day and date with the Southside? A. Yes, sir.

Q. All right. Now, that went on for a while?

A. That is right.

Q. Is that what you call experimenting?

(Testimony of Bert Pirosh.)

A. Yes, sir, it certainly was experimenting. [856]

Q. All right. Did Paramount do some more experimenting? A. Yes, sir.

Q. What did they do next?

A. Well, they developed——

Q. This was all in 1950 and 1951?

A. Yes, sir.

Q. All right.

A. They developed what they called a circle plan whereby they drew a circle around each theatre and in that circle were included theatres that Paramount said were in substantial competition to that particular theatre.

They had a series of circles which intersected one and another. The highest bidder in the entire area, in the Westchester-Inglewood area was awarded the picture.

They were offering two runs to be played on a day and date exhibition. If the second highest bid was not in the same competitive area that Paramount had laid down as the highest bid, those two theatres were offered the picture.

Q. All right. Now, that abstractly may sound complex, but I think if we get down to talking about theatres, it becomes not too complex.

Suppose the Southside Theatre were to offer the highest bid in the entire Inglewood-Westchester area to Paramount? A. Yes, sir. [857]

Q. That theatre would get the bid?

A. That is right.

Q. All right. Now, what over on the western

(Testimony of Bert Pirosh.)

side — Southside is on the eastern side of the Inglewood-Westchester area?

A. That is right.

Q. All right. Now, a way over on the western side is the Paradise. Supposing the Paradise had put in the second highest bid under the Paramount plan?

A. He would get the picture.

Q. So then the Paradise would play day and date with the Southside?

A. Yes, sir.

Q. All right. Now, under this same Paramount plan, supposing the Academy were to make the highest bid in the eastern part of the Inglewood-Westchester area and supposing you were willing to waive the clearance which you thought you ought to have, then if the Paradise made the second highest bid, could it play the picture?

A. Yes, sir.

Q. Day and date with the Academy?

A. Yes, sir.

Q. All right. Let us go on into Inglewood. Supposing the United Artists Theatre made the highest bid in this area, it would get a run? [858]

A. Yes, sir.

Q. And then there was a second day and date run and suppose the Paradise made the highest bid, second highest bid in the area, could it play day and date with the United Artists Theatre under the Paramount plan?

A. Under the Paramount plan, it could, yes, sir.

Q. All right. Now, supposing the La Tijera Theatre, some two miles distant from the Paradise,

(Testimony of Bert Pirosh.)

were to make the highest bid in the Inglewood-Westchester area, would the Paradise then play, if it made the second highest bid, could it play day and date with the La Tijera? A. No, sir.

Q. Go ahead.

A. Paramount considered the La Tijera Theatre as the only bidding theatre at this time in the entire area which could take clearance on the Paramount pictures over the Paradise Theatre and if any of the other theatres in Inglewood, the Academy or United Artists or Southside received the picture and the Paradise was the next highest bidder, the Paradise could play the picture day and date.

Q. So with respect to Paramount pictures all Mr. Schreiber had to do to play day and date with the other theatres in the Inglewood area was to put in the second highest bid except for the La Tijera?

Mr. Corinblit: Object to the question as calling for [859] a conclusion of the witness.

The Court: Objection overruled.

The Witness: That is correct.

Q. (By Mr. Mitchell): Now, how did Warner Bros. go about licensing its 7-day availability or availabilities? Before I ask you that question—let me withdraw that.

You used the word “clearance” in the Paramount plan. Was there really any clearance involved in the Paramount plan?

A. There was no clearance. There was a priority of run.

Q. I think you will have to explain that, what

(Testimony of Bert Pirosh.)

you mean by clearance as distinguished from priority of run.

A. All right. Clearance is a term used in the motion picture industry, in the theatre business, to denote the lapse of time after the completion of a run before the next run in the competitive area can play the picture.

Q. Is it an agreement with the prior exhibitor?

A. The distributor in licensing a picture says to Loew's State Theatre, tells Loew's State Theatre that if you play this picture no theatre in Inglewood, for example, can play this picture until 7 days after the completion of your run. That is where the term that you have heard "7-day availability" comes from.

Q. Now, that is what you call clearance? [860]

A. And that is clearance, the number of days—whether it is 7 days over Inglewood or 21 days before the Fairfax Theatre can play the picture or the Baldwin Theatre.

Priority of run merely means that the theatre buying the picture or licensing the prior run has the right to play the picture before the next theatre.

In Inglewood, where Paramount was licensing the 7-day availability and 14-day availability, if the La Tijera Theatre bought the 7-day availability they play it the 7 days and the day after they finish it could open in the Fox Theatre or the Paradise Theatre or any other theatre.

The La Tijera would have the prior or earlier run but would be allowed no days of clearance—blank

(Testimony of Bert Pirosh.)

days when nobody in the area was playing the picture.

Q. No lapse of time between the completion of the La Tijera run and the commencement of some other theatre playing it?

A. The La Tijera would complete the run on Tuesday night and it would open Wednesday at noon at the Fox Theatre or United Artists Theatre.

Q. Paramount was also offering two 14-day runs in the area? A. That is correct.

Q. Which would start immediately after the completion of the 7-day runs? [861]

A. Well, it would start after 7 days of the 7-day run.

Q. Don't the 7-day runs usually run 7 days?

A. Well, usually, but sometimes they were held over and in that case the 14-day availability theatres may be overlapping the run in the first theatre.

Q. The 14-day availability might be playing day and date? A. That is correct, sir.

Q. All right. Now, I would like to ask you how Warner Bros. licensed its 7-day availability or availabilities in the Inglewood-Westchester area?

A. Well, Warner Bros. throughout——

Q. This is in 1950 and '51.

A. Yes, sir. Warner Bros. throughout the period in question licensed their pictures without formal competitive bidding on a basis of negotiating competitively orally with the various exhibitors and merchandising each picture to their best advantage.

Warner Bros., if they thought that they were bet-

(Testimony of Bert Pirosh.)

ter off on a picture playing two theatres than one theatre, they would offer two runs.

Q. Day and date?

A. Day and date. If they thought that this picture was good enough so that they could get good film rental from three theatres in this area, which were reasonably far apart, [862] they would license three runs and maybe they went beyond that. I don't recall whether they went beyond or not, but I know they did have some pictures play one run and some two day and date and some pictures three day and date during this period.

Mr. Corinblit: Your Honor, I would like to move to strike the portion of the answer beginning with the words "they thought." The witness can testify as to what he knows and how he dealt with them, certainly, but not what Warner thought about the matter.

The Court: It may go out.

Mr. Mitchell: I don't know what is going out and what is left in.

Q. Let me ask the question again. What did Warner Bros. do? You may have to repeat what you have said, but what did Warner Bros. do in the Inglewood-Westchester area with respect to the 7-day availability or availabilities?

A. Warner Bros. were not negotiating by bidding competitively on the formal competitive bidding system. They were negotiating competitively among the various theatres for each picture individually and Warner Bros. would decide how many

(Testimony of Bert Pirosh.)

runs they were going to offer on an individual picture. Perhaps one run in the entire area, perhaps two runs, perhaps three runs.

They approached the various exhibitors and said that [863] such and such a picture is available on such and such a date and I am going to serve one run or two, or whatever the case might have been, and what do you want to offer for the picture.

The exhibitors would—I don't know about the other exhibitors, but my company would make an offer in the theatre in which we wanted to play the picture and sometimes we got the picture and sometimes we didn't get it. [864]

Q. All right. Now, in this same competitive area in 1950 and 1951, on the 7 day availability or availabilities, how was Universal offering its pictures?

A. Well, Universal had a little different system. Universal at that time was licensing two runs in a—a maximum of two runs in this Westchester-Inglewood competitive area. Universal would ask for competitive bids, for the highest bids, and after the bids were received by Universal, one theatre would be awarded the picture.

Universal would then negotiate with the remaining theatres in the area, in the Inglewood-Westchester area, and license another run which in their opinion would not conflict or be a minimum of conflict with the highest bidder.

They would not, for example, if the United Artists Theatre received the picture, license a run to the Fox theatre, which is only a block or so away,

(Testimony of Bert Pirosh.)

but they might try to license it to the Southside Theatre, or another theatre which they thought was a pretty good distance away.

Q. So that if Universal were to license its pictures to the Southside as the winning bidder, then the second Universal run would be available to the Paradise if it would offer the most money?

Mr. Corinblit: Just a minute, your Honor. I will object to that question because the witness doesn't know whether it would be available to the Paradise. We are discussing [865] now only what Universal does, but he cannot say what Paradise does.

Mr. Mitchell: I am not asking what Paradise does. I am asking if under the plan, could Paradise, if he offered more money, play day and date with the Southside.

The Court: Overruled.

Q. (By Mr. Mitchell): What is the fact?

A. As I understood the Universal plan, the Paradise Theatre could have played the run with the Southside if they had offered Universal enough money.

Q. What kind of pictures in terms of quality was Universal making in those days, 1950 and 1951?

A. Well, Universal was making only fair pictures at that time. They did not spend as much money on the pictures as companies like Paramount or Metro or Warner Bros. They generally didn't have as popular stars in them, Clark Gables, and so forth. Overall, their product was what I, as an exhibitor, would say was just fair product, and it was

(Testimony of Bert Pirosh.)

not topflight motion picture entertainment, or at least it didn't sell a lot of tickets compared to those released by some of the other companies.

Q. On the 7 day availability, where did you play Universal product, the top or the lower half of a double bill?

A. Well, we played a number of Universal pictures in [866] our theatres as the top pictures, frequently not because we wanted to but because it was the best that was available for us at the time after the other pictures were sold.

Q. Did you play any at the lower half of a double bill?

A. I am sure that we did, yes, sir.

Q. And Twentieth Century-Fox during this period, how did it sell its 7 day availabilities?

A. Twentieth Century-Fox during this period sold its pictures to our theatres, to the National Theatres.

Q. To their own theatres?

A. They owned the company.

Q. Now, with respect to Los Angeles first run during this period of time, Mr. Hickey has told us how Loew's pictures were generally licensed first run Los Angeles during this period of time.

How were Paramount pictures generally licensed first run during this period of time?

A. During this period of time——

Q. 1950 and 1951.

A. I think throughout the period Paramount was licensing its pictures to the Paramount Theatre

(Testimony of Bert Pirosh.)

downtown, Los Angeles, and to the Paramount Theatre in Hollywood.

Q. Who operated those theatres?

A. Well, Marco Wolff, and I think some partners, some [867] associates.

Q. The same Marco Wolff that was buying pictures for a while for the Paradise?

A. Yes, sir, the same Marco Wolff.

Q. Do you know what his arrangement was with Paramount?

A. It was a franchise arrangement. He had a franchise giving him—a franchise which Paramount had granted to his company, granting them the right to play the Paramount pictures first run in the city of Los Angeles.

Q. Under that franchise did Marco claim clearance over other theatres in the Los Angeles area?

Mr. Corinblit: Now, your Honor, we are asking the witness what someone else claimed under a franchise.

Mr. Mitchell: He knows.

Mr. Corinblit: I object to that as being without foundation and calling for a conclusion of the witness.

The Court: The question is, did Marco claim to have preference. The witness is not asked what the situation was. He is asking what Marco claimed.

Mr. Corinblit: Yes, sir.

The Court: If he knows what Marco claimed, he can answer.

(Testimony of Bert Pirosh.)

Q. (By Mr. Mitchell): Did Marco ever make the claim to you?

Mr. Corinblit: That is a perfectly proper question. [868]

The Witness: Marco had clearance.

Q. (By Mr. Mitchell): Did he ever make the claim to you? A. Yes, sir.

Q. Tell us what he claimed.

A. Marco claimed the pictures could not open in Inglewood, for example, until 7 days after the completion of their run in the Paramount Theatres downtown and in Hollywood or in any other towns surrounding Los Angeles, such as Pasadena or Glendale and the like.

I know that this is true because if we wanted to play a Paramount picture in three or four days after the closing in the Paramount Theatres, Marco's theatres, I would have to call Mr. Wolff and ask him to give me a waiver of clearance so that I could open the picture in Inglewood, say, or in Pasadena on Sunday, instead of the following Wednesday.

I knew I had to do that because I was told by the local people working for the local Paramount exchange that if I wanted to get the picture early, I would have to secure waiver of clearance from Mr. Marco Wolff.

Q. Who were the local people who told you that?

A. Mr. George Smith, Mr. Al Taylor, the booking people I talked to.

Q. This was in 1950 and 1951?

(Testimony of Bert Pirosh.)

A. Yes, sir. [869]

Q. What did they say to you in respect to this clearance?

A. They said it was in the franchise and that they could not grant a clearance break because they were prohibited from doing it by the terms of the franchise.

Q. All right. Do you know how long Paramount continued to serve pictures to Marco in the Paramount Downtown and Paramount Hollywood Theatres?

A. I think that the franchise expired some time in 1952.

Q. You were asked by Mr. Corinblit about how Paramount has played its pictures since that time, if it has played its pictures first run in Los Angeles in a number of different ways. Just tell us how Paramount has been playing its first run pictures after the franchise expired?

A. After the franchise expired Paramount decided that they would offer some——

Q. He won't let you say about what Paramount decided. There will be an objection to that. Just say what Paramount did.

A. Well, Paramount offered a number of its pictures for exhibition, for simultaneous exhibition in seven areas in and about the city of Los Angeles.

Q. On bidding?

A. Yes, sir. I was getting to that. [870]

Q. Okay. Go ahead. Excuse me.

A. They offered a run in downtown Los Angeles,

(Testimony of Bert Pirosh.)

one on Hollywood Boulevard, one in the San Gabriel Valley, including Pasadena and El Monte, and so on, one in the Westchester-Inglewood-Redondo area, one in the Huntington Park and Southwestern area, and one in the western end of greater Los Angeles, Westwood, Santa Monica, and so on.

In each of these areas when Paramount first started the plan, I can speak for our own theatres, we received a letter from Paramount asking us if we were interested in bidding for the pictures in that particular area.

Paramount continued that plan on a number of their pictures for several years, and in the course of the last year, some time within the last year, they increased the number of areas on day and date runs from seven to, I believe, 11, but more and more in the past two years, at least, Paramount has offered their pictures to one theatre for a so-called show case run. I think that more than half of the Paramount pictures which have been released in the last year have played first run Los Angeles in one theatre only, and then after the one theatre would play, they would offer it to theatres on a subsequent run availability.

Q. On these multiple runs?

A. Yes. After the first run they would go into the multiple run. [871]

Q. Now, Warners during the period 1950-1951 were licensing their first run pictures to their own theatres. I think we have had evidence of that.

A. Yes, sir.

(Testimony of Bert Pirosh.)

Q. The Warner's Downtown, Warner's Hollywood, and the Warner's Wiltern, is that right?

A. That is right.

Q. How long did that continue, do you know?

A. I think that continued until about 1953, and I believe in 1953 they opened or put Cinerama into the Warner's Theatre in Hollywood.

Q. That has been playing ever since?

A. Yes, sir.

Q. Either that or Cinerama Holiday?

A. Yes, sir.

Q. Is that any kind of a show case run?

A. Well, I think that the Cinerama is the outstanding example of a show case run that I have ever seen in this business. Cinerama is playing, I believe, in only about 15 cities in the United States today. It has run for a year and a year and a half and as high as two years in one town, and it is not permitted, the people who own Cinerama will not sell it today after it has been running in this theatre for so long in Hollywood, to a theatre in San Diego or to a theatre in Phoenix, Arizona. They feel that they are better off—well, I better take that back.

Q. He will object to that. Just say what they did.

A. In my opinion the people who have used Cinerama have used outstanding showmanship in achieving the results that they have and I personally lay the success of the thing to the way it was handled.

Q. To what?

(Testimony of Bert Pirosh.)

A. To the way in which it has been handled.

Q. How has Warner Bros. been licensing its regular run of feature pictures since, say, 1953?

A. Well, Warner's have used several different methods of distribution on their very best pictures.

They have played pictures like Mr. Roberts and Battle Cry and currently the Moby Dick. They have played the pictures either in one theatre exclusively, a showcase run, only one theatre in the entire Metropolitan area or in three theatres.

They have played a number of their pictures, generally the inferior ones, in the so-called multiple run where it is scattered all over the county.

Q. Did Warner Bros. at some time during this period dispose of its theatre interests?

A. Yes. They have disposed of their theatre interests but I don't know when. [873]

* * * * *

Q. (By Mr. Mitchell): Mr. Pirosh, yesterday you testified that after the expiration of the Paramount franchise, Paramount on first run Los Angeles established some seven runs and then played some of its pictures in that sort of a multiple run, and you said played most of its pictures on a showcase basis in a single theatre.

With respect to the period of 1952 and 1953 on Paramount [878] pictures and the period 1954 and 1955 and now, was there a difference in the caliber of Paramount pictures?

Mr. Corinblit: I object to that, your Honor.

The Court: You mean the quality?

(Testimony of Bert Pirosh.)

Mr. Mitchell: The quality.

Mr. Corinblit: I object to that, your Honor, unless we have a definition of what Mr. Mitchell is driving at by caliber or quality.

The Court: We had testimony from MGM the other day that they made the best pictures, and I presume from a quality standpoint. Overruled.

The Witness: Well, the only yardstick that I can use as to quality is the amount of business the pictures did at the box office. I would say that in the last three years, with the exception of a few recent months, Paramount pictures in 1953, 1954 and 1955 were better than the pictures they had been releasing immediately prior to that time.

Q. (By Mr. Mitchell): All right. Now, with respect to these better Paramount pictures, how had Paramount been releasing them first run?

A. The great majority of their quality pictures have been exhibited first run in the Los Angeles metropolitan area in one theatre.

Q. Can you give me some examples?

A. Yes. *Shane* played first run in the Chinese Theatre. [879]

A Place in the Sun and *Come Back Little Sheba* played, I think, in the Fine Arts Theatre.

Proud and Profane is currently playing in the Four Star Theatre.

The Hollywood Paramount Theatre is currently playing *That Certain Feeling*, a Bob Hope picture.

Their next attraction in August is *War and Peace*.

(Testimony of Bert Pirosh.)

Then Ten Commandments——

Q. Where will War and Peace play?

A. In the Hollywood Paramount Theatre.

The Ten Commandments is licensed to Warner's Beverly Theatre to open this November on an exclusive run. [880]

Q. How about the picture Rose Tattoo?

A. The Rose Tattoo played in Warners' Beverly Theatre.

Q. How about Bing Crosby's Little Boy Lost?

A. The Little Boy Lost played in the Wilshire Theatre; and, I think, Stalag 17 for which Bill Holden received an Academy award, that played in the Wilshire Theatre.

Q. Some of these others were involved in the Academy awards. What about Rose Tattoo?

A. Miss Magnani received the Academy award, Although I never knew why.

Q. How about Come Back, Little Sheba?

A. Come Back, Little Sheba was an Academy award picture.

Q. Was Place in the Sun also involved in that?

A. Place in the Sun—I think the director received the Academy award for the best direction, but I am not positive.

Q. Loew's has very recently been engaged in selling at least some of its—licensing at least some of its pictures on a multiple first run. How are the recent, 1955 and 1956, Loew's pictures in terms of quality in comparison with the past?

(Testimony of Bert Pirosh.)

A. Well, Loew's started this releasing of some of their pictures on this so-called multiple first run in May of 1955.

Since that time the three best box-office pictures they have had were *Guys and Dolls*, *I'll Cry tomorrow*, and the coming [881] *High Society* which has Bing Crosby, Frank Sinatra, and Grace Kelly.

High Society is going to open in the *Pantages Theatre* in Hollywood very soon on an exclusive run.

Incidentally, I heard Mr. Hickey say the other day how much more they spent for advertising than they received in film rental on these showcase runs, but I know for a fact that Metro received enormous film rentals on both *Guys and Dolls* and *I'll Cry Tomorrow* on their showcase runs, for, far surpassing the advertising money they spent. It was a profitable engagement for Loew's.

Q. Other than these showcase—

Mr. Corinblit: Just a minute, Mr. Mitchell. May I move to strike the answer, your Honor, the portion of the answer stating that they were profitable engagements for Loew's. No foundation laid.

The Court: It may go out.

Q. (By Mr. Mitchell): I asked you about the quality of Loew's pictures generally in the last year. You spoke of these three pictures that are being showcased. What is the quality generally of Loew's pictures?

A. The box-office performance of Loew's pic-

(Testimony of Bert Pirosh.)

tures in the last year has not been up to the standard of Metro-Goldwyn-Mayer pictures in the past.

Q. Since Twentieth Century-Fox disposed of its theatre [882] interests, which it has been stipulated was in September 1952, how has Twentieth Century-Fox licensed its first run Los Angeles?

A. They have licensed their run-of-the-mill or mediocre pictures generally to four theatres in various districts—Downtown, Hollywood, the Wilshire district and the Westchester-Inglewood district—in each district on a competitive bidding basis.

On a number of their fair pictures they have licensed one, two, and maybe three pictures on the so-called multiple run with theatres and drive-ins all over the county. [883]

Q. What do you think of the relative advantages and disadvantages of show case first run exhibition in one or two theatres as opposed to multiple runs where they play day and date in the suburban cities like Inglewood, and so on?

Mr. Corinblit: We will object to that question, your Honor.

The Court: Overruled.

The Witness: Well, I would say that that depends on the quality of the picture. When I speak of quality, again I am speaking of the box office potential. We run a business to try to make money, and motion pictures are made in the hope that the man who made the picture will make money.

With the pictures that do good business, in my

(Testimony of Bert Pirosh.)

opinion, the distributor is far better off releasing the picture in this Los Angeles metropolitan area in one theatre. There are a number of reasons why I feel that way.

First of all, there is the angle of, the commercial angle, the dollars and cents to the distributor.

Twentieth Century-Fox, for example, received over a quarter million dollars in film rental from the Chinese Theatre on *The Robe*, on one picture.

I was told by the Metro people that they received well over \$100,000 in the Four Star Theatre on *I'll Cry Tomorrow*.

I know that in the Fine Arts Theatre on a [884] picture like *Red Shoes*, a picture that was made in England, the action took place in France, a ballet picture, we paid in the neighborhood of \$150,000 film rental in the little Fine Arts Theatre on Wilshire Boulevard.

Now, as far as the value of the picture in the entire territory served out of the Los Angeles exchange area, which includes the state of Arizona and all of Southern California and part of Nevada, it has been my experience that the pictures which have been played first run in a show case generally do far better than the pictures which are thrown into 10 or 15 theatres, and are in and out in one week or two weeks. I think there are a lot of reasons for that.

First of all, with a picture like *The King and I*,

(Testimony of Bert Pirosh.)

for example, which is currently playing in the Chinese Theatre, *The King and I* will be played in the Chinese Theatre, the only theatre in Los Angeles County playing it, for—I better withdraw the County—in the metropolitan Los Angeles area playing it, for a period of eight or nine or ten or twelve weeks. Nobody knows yet because the picture is doing a magnificent business.

During all this time there will be in all the Los Angeles newspapers every day for a period of two or possibly three months a display ad telling the people that *The King and I* with stereophonic sound and made in Cinemascope and in color, is playing in the Chinese Theatre. [885]

The word of mouth angle, I think, is very important. When you go to see a motion picture, and if you like it, you don't get up the next morning, or I don't and pick up the phone and call all your friends and say, "I saw a fine picture last night," but during the course of the next three or four weeks in discussions with friends, visiting at people's homes, or at lunch with other people, if the conversation turns to motion pictures—or generally it is television first today, unfortunately, but if it turns to motion pictures and I have seen *The King and I*, I will say, "I saw a wonderful motion picture the other day, *The King and I*, and it is playing in the Chinese now, and it is fine."

You get a very deep word of mouth penetration, not only in the city of Los Angeles, but in towns

(Testimony of Bert Pirosh.)

like Pomona and Long Beach and San Diego, and even towns as remote as Phoenix and Tucson.

In the Chinese Theatre in particular, and I think this is one reason why Mr. Hickey said he prefers the Chinese, I would say 50 per cent of the people who come to visit Los Angeles from any part of the United States for the first time go to the Chinese Theatre to look at the footprints—maybe it isn't 50 per cent, but a great number of people go to look at the footprints in the lobby. This has made this theatre a famous theatre.

The people in these towns in Southern California and [886] Arizona who see the Los Angeles papers, and these Los Angeles papers get a good deal of circulation in San Bernardino and Santa Barbara, and so forth, identify any picture that plays in the Chinese Theatre, for example, or in the Egyptian or Four Star or Pantages, these are well-known theatres, as "This must be a good picture." That is the thought that the people have in mind.

The King and I, Twentieth Century-Fox are releasing very, very slowly in this territory. It hasn't yet opened in towns like Santa Barbara or Pomona or Long Beach. It won't play in a town like Long Beach until about the middle of August.

The Twentieth Century-Fox people feel that the word of mouth that is generated and the fact of the continuing impact of the ads in the newspapers and plugs on radio, will persuade the people in these cities that this is a wonderful motion picture and

(Testimony of Bert Pirosh.)

that the people will then have a desire, when the picture is presented in their local theatre, to see the picture.

If the picture goes into eight or ten or twelve or fifteen theatres and is in and out in a week, there is no longer a display ad in the newspapers.

If it is playing in a theatre, it is in the calendar ads, and you have to have pretty good eyes to read them. I need my glasses to find out what is playing in them. [887]

There is no glamor about it. The motion picture business, in my opinion, is a business that represents glamor, and we are selling glamor and escape from our hum-drum lives. A visit to a motion picture to many people is an event. They do it once a week or once every two weeks or twice a week.

Now, if a picture receives fine word of mouth, and I am talking about quality pictures and pictures that appeal to the public, it has been my experience that when it plays these surrounding towns and it has had a chance to penetrate, that it means more at the box office in Pomona or in Santa Barbara than it would if it had gone into those towns the same day it opened in Los Angeles, when there is no opportunity for word of mouth and where the people see the ads in the papers.

In the ads, there are never any bad pictures, everything is the greatest. We overdo it and know it. You never see us say, "Well, this picture isn't very good." They are all good.

(Testimony of Bert Pirosh.)

But if you have talked to four or five people who tell you this is a wonderful picture and don't miss it when it comes to your theatre close to you, you are more apt to take the word of a friend than the word of an advertising man from the motion picture company or the theatre.

The picture *Trapeze* is a good example. This is show casing on a national level. The world premiere was at [888] the Wilshire Theatre here the day before Decoration Day. The picture opened in New York the following week and it didn't play anyplace else in the United States until the last week in June.

The United Artists paid for—or Hecht-Lancaster, who produced the picture, spent about \$20,000 bringing Mr. Ed Sullivan and some of his crew and camera crews from New York to Los Angeles to film the premiere of the picture, the celebrities arriving at the theatre, and so on.

A week from the following Sunday, or the following Sunday, I forget which, Ed Sullivan's show was devoted largely to *Trapeze* with pictures of the premiere, with Burt Lancaster and Tony Curtis appearing in the show.

There again they were selling glamor, the stars coming into the Wilshire Theatre.

They spent a lot of money on the Los Angeles premiere, a good part of which did not apply only to Los Angeles. They were selling a picture nationally, for the United States. [889]

(Testimony of Bert Pirosh.)

Now, the effect was—the effect was when this picture played in Phoenix, Arizona, for example, we grossed more than \$20,000 in one week in Phoenix.

Now, that doesn't mean much to you one way or the other until I tell you that with the exception of *The Robe* this is the biggest gross we ever achieved in our theatre in Phoenix. And this was in a year when the motion picture business was supposed to be out of business. People don't go to the movies anymore, but people came to see *Trapeze* because people had been sold on the fact, "Here is a very, very fine motion picture."

Now, if that picture had opened in Los Angeles in 10 or 12 theatres I am positive Mr. Ed Sullivan would not have come to Los Angeles to film the people going into a drive-in in Inglewood or in the El Portal Theatre in North Hollywood because there would be no interest in that.

The tickets for the premiere, and this is just a side thing, were sold at \$10 and \$25. The entire amount of money received was given to charity. This was for the Variety Club Boys' Club on the east side of Los Angeles.

The theatre lost money that day. The theatre didn't receive anything. The man showed his picture to 2000 people and he received no film rental but because of the fact that the money was being donated to charity the picture—the charity angle was given space in the newspapers. People [890] read of the premiere of *Trapeze*, and it listed the

(Testimony of Bert Pirosh.)

stars present and the fact that the money was going to this boys' club.

The premiere of *The King and I* at the Chinese Theatre that was another charity premiere. Tickets sold for as high as \$50 and \$100. That money went to a hospital, all of it.

Twentieth Century-Fox got none of it. Fox West Coast Theatres got none of it, but because of the charity angle a great many stars attended the premiere. They were photographed. Their pictures were in the newspapers and in fan magazines and not only in Los Angeles but also all over the United States.

People read about *The King and I*. They saw this star and that star attending the premiere.

This thing is not only a local showcase. Generally on the big, big pictures it is a world premiere, either in New York City, which is the entertainment capital of the East, or Los Angeles and specifically Hollywood or the Wilshire area, and Hollywood, of course, is the entertainment capital of the West and largely of the world.

The distributors feel, and they say that they can back it up with money, that the showcase runs help their pictures, not only in Los Angeles—the Los Angeles Metropolitan Area—not only in Southern California but frequently all over the United States.

The *Ten Commandments* will open at Warner's Beverly [891] Theatre at least a month before it opens in a city like San Francisco.

(Testimony of Bert Pirosh.)

The picture is going to open in November in New York and in Los Angeles, Beverly Hills, and I don't think anywhere else in the United States before Christmas.

Chicago may come in earlier than Christmas. In a city like Seattle *The Ten Commandments* is not being offered for exhibition until February.

So, Paramount's theory is, as Paramount has explained it to me, they have said that they want to play Los Angeles for at least two months before the picture is offered to anyone in Seattle to play because they want the word-of-mouth and the publicity to percolate.

If *The Ten Commandments* were playing in 15 theatres in Los Angeles it would play for about two, three or four weeks. It is just another picture and it is forgotten and it has gone by the board and there is a new picture coming up.

But *The King and I* is still a live attraction.

Now, I personally think there are some other factors in this. There is, as I say, some glamor in the motion picture business.

Speaking from the standpoint of the theatre, the Chinese Theatre, for example, we have spent—my company has spent more than \$200,000 in the last three years fixing this theatre up so that it is a fine theatre. We put in all new seats. [892] Theatre seats cost all the way from \$20, \$25 to \$30 apiece and when you put in 18 or 19 hundred seats you are running into a pretty good expense.

(Testimony of Bert Pirosh.)

The entire theatre was re-carpeted. If anybody ever put carpet in their home he knows that carpeting is a pretty good item.

We spent a fantastic amount of money to install Cinemascope equipment and sound equipment in the theatre just this year. I think it was in January or February.

We spent another 11 or 12 thousand dollars in the Chinese Theatre to improve the sound.

We had the regular stereophonic sound, 3-channel sound or 4-channel sound.

We spent 11 or 12 thousand dollars to install 6-channel sound after we had bought the picture *Carousel*.

Fox had made this picture with a 6-channel high fidelity sound and if you wanted to see *Carousel* in the 6-channel high fidelity sound in the Los Angeles area, you had to go to the Chinese Theatre to see it because no other theatres in the Los Angeles Metropolitan Area have seen fit to go to the expense of providing this finer sound for their patrons.

Now, we are not philanthropists. We don't do this just so the people can hear better sound. We think that the people will see a picture with this kind of sound in the Chinese Theatre and they will say, "This is wonderful," it enhances [893] their enjoyment of the picture and they will want to come back to the Chinese Theatre to see the next picture.

This picture *The King and I* has the 6-channel

(Testimony of Bert Pirosh.)

high fidelity sound. The enjoyment of the picture is certainly enhanced by seeing it in comfortable surroundings.

Now, I think one other factor that helps these pictures in this Los Angeles Metropolitan Area is what I would call "snob appeal."

In order to spend this kind of money in the Chinese Theatre they have to make pretty good profits or else we would be pretty bad businessmen.

We pay high terms to buy the pictures that we buy in the Chinese Theatre. We pay a lot of film rental for the picture.

In order to pay these film rentals we have to charge what a lot of people think are exorbitant admission prices.

On *The King and I* at night our admission price is \$2 for general admission, and for the loges it is \$2.40.

Now, everyone knows who has lived here for more than six months, that by September you will be able to see this picture in other theatres for \$1.25 or \$1.50 and later in September or early in October the picture will be showing at theatres at \$1 admission. And unquestionably in October or November at the very latest, this picture will be showing at theatres like the Fairfax Theatre or the Westlake Theatre or the Baldwin Theatre and it will be showing at 50 cents admission. [894] And still later it will be showing in theatres at a price even cheaper than 50 cents. And it will also be

(Testimony of Bert Pirosh.)

showing at the drive-ins at a dollar admission or a 75-cent admission with children free.

Now, why do the people pay \$2 to go to the Chinese Theatre? Part of it is the people to whom the money means nothing, which doesn't include too many people.

Part of it are the people who like to tell their friends, "You know, I was out with my wife Saturday and we had a wonderful steak dinner and it cost us \$3.50." They throw that in to impress the friends and those same people today say, "I saw The King and I at the Chinese Theatre and it is a wonderful picture, but it cost us \$4.80 for two loge seats."

Now, they are trying to impress their friends that they spend that kind of money for entertainment.

They could have waited two months and seen the same picture. The only difference would be that it would not be in 6-track high fidelity sound, and they could have saved themselves \$3.80.

They wanted to impress their friends that they had seen it. A great number of people who are visitors to Los Angeles from the East are accustomed to paying these admission prices. The New York theatres get \$2 all the time, downtown New York Theatres, and for some pretty rotten pictures.

Trapeze—the admission price in the Wilshire is \$1.75. [895] The public is paying it. There is no price resistance at the Chinese Theatre.

The third week, the first four days, Friday, Sat-

(Testimony of Bert Pirosh.)

urday, Sunday and Monday more people came to the Chinese Theatre on those four days than came the Friday, Saturday, Sunday and Monday of the week before.

They paid more dollars to see this picture. So, apparently, the word-of-mouth now is starting to get around.

The second Friday, the picture's opening day, the premiere was on a Thursday. The opening day was Friday.

The second Friday more people came to the Chinese Theatre to see *The King and I* than came in on the opening day.

Now, this is very, very unusual. The third Friday more people came to the Chinese Theatre to see *The King and I* than came in on the first day of the picture. This is the 15th day against the first day.

Now, in a lot of our theatres we play day and date with 11, 12 or 20 other theatres in Los Angeles and never in my experience has a picture on the second week, on the opening day or any day, done as much as it did the first week.

Because it is not glamourized the public thinks, "Well, this is just another picture."

In my opinion for very, very many reasons a distributor is better off. Now, when *The King and I* is released in September or October for a second run after the Chinese Theatre, [896] and it is a second run, the Twentieth Century-Fox will say, "We

(Testimony of Bert Pirosh.)

invite you to bid for the picture first run Los Angeles," or the fourth run or tenth run or fifteenth run or whatever it is.

They are trying to con their customers into thinking that this is a first run picture, but it is not. It has played for two or three months at the Chinese Theatre first run Los Angeles. It is second run when it gets to the other theatres.

When this picture plays these theatres, despite the fact that the Chinese Theatre will have grossed a lot of money and paid a lot of film rental, it will in my opinion do better business than if it had opened in 10 or 15 theatres day and date because by this time the people know, they are convinced, they are sold and whether it is right or wrong, you might not like it, you might not like the picture, but whether it is right or wrong the public is convinced this is an outstanding motion picture and will want to see it and, "I am going to take my wife and the kid and we are going to see *The King and I*." [897]

The way the public came to see *I'll Cry Tomorrow* after the run in the Four Star, and this was a sordid, depressing story—I don't know if any of you people have seen it, but there was a magnificent performance in it by Susan Hayward. It was an outstanding motion picture, and the public flocked to see it, and it played more than three months in the Four Star Theatre.

I will guarantee that when it played in Inglewood or Westchester or when it played in Glendale, it

(Testimony of Bert Pirosh.)

did more than 95 per cent of the pictures and it may be much closer, I think, to 100 per cent than the pictures that opened in those towns on the so-called multiple run day and date, because the public is pretty smart in the long run, and they are pretty hard to fool. They have to be convinced that this is something I want to spend my hard earned money on.

These are some of the factors that in my opinion make the one-theatre show case run preferable to a spread run.

I heard Mr. Hickey the other day talk about two-theatre show case runs. I have a great deal of respect for Mr. Hickey's opinions. I have known him for a number of years. He is a pretty smart, hard-headed businessman. He knows his business. But in my experience, my experience has been that the pictures that are played in two theatres do not do as well in either theatre as the pictures that are show cased in the [898] one theatre.

I think Mr. Hickey, despite his constant talk about the two-theatre show case, showed that he really prefers the one theatre when he has a good picture. He didn't have too many this last year. Don't let him kid you too much. When he gets Guys and Dolls and he gets I'll Cry Tomorrow and he gets High Society, they go in one theatre.

When Warner Bros. comes up with Giant, which is a wonderful picture, coming up in the next few

(Testimony of Bert Pirosh.)

months, I am pretty sure that is going to play in one theatre.

When they had *High and Mighty* and *Battle Cry*, they played it in one theatre.

Whereas Columbia a few years ago played pictures like *From Here To Eternity* in two theatres, they seem to have learned, because *Picnic* played in one theatre and the *Eddy Duchin Story* played in one theatre, and coming up with *Solid Gold Cadillac*, with *Judy Holliday*, which Columbia says is very good, that is going to play in one theatre opening the latter part of August.

Paramount has played more than half of its pictures this last year in one theatre exclusive in Los Angeles.

Mr. Hickey was complaining that he can't get the Chinese Theatre. We own the Chinese Theatre. I will tell you one reason why Mr. Hickey can't get it is because he wants the Chinese Theatre to play day and date with a theatre [899] in downtown Los Angeles and I won't give him the Chinese Theatre on that basis, because I can't make enough money in the Chinese Theatre playing day and date with downtown Los Angeles.

The downtown Los Angeles run takes money from the Chinese Theatre and that is why we won't do it, and that is the reason Mr. Hickey kept complaining that he would love to have the Chinese Theatre.

He could have it if he would offer the picture to me at a time when I could use it.

(Testimony of Bert Pirosh.)

Q. Mr. Pirosh, do you think it was good business for the Loyola to play a day and date run with the Chinese and the Los Angeles and other theatres in 1950 and 1951?

A. Well, I think it may have been good business for the Loyola Theatre, but it was certainly bad business for the Chinese Theatre. It hurt the Chinese Theatre. In my opinion, it was bad business for Twentieth Century-Fox.

This was one of the factors that forced the Chinese to the exclusive run policy. We were playing the Chinese Theatre in 1950, 1951 and 1952 day and date with two or three other theatres. The profits in the Chinese Theatre were dwindling at a very alarming rate.

When we started operating the theatre at the end of 1952 ourselves, our first move was to try to get pictures for the Chinese Theatre on an exclusive run basis, because playing day and date with these other theatres, we couldn't charge a [900] high enough admission to get the top gross, and the theatre was being cheapened in the eyes of the public—that is a personal opinion, the cheapened part.

I tried to get the picture *Peter Pan* very early in 1953 for the Chinese Theatre exclusive. RKO wouldn't sell it to me. They sold it to two other theatres, the Hillstreet and Pantages.

In April we were successful in getting a picture from Twentieth Century-Fox, *Titanic*. We did

(Testimony of Bert Pirosh.)

pretty good business on it, much better than we had been. It was not an outstanding picture.

Then in June of that year we bought *Shane* for the Chinese Theatre. We did phenomenal grosses in the Chinese Theatre, and we paid Paramount in eight weeks 120 some odd thousand dollars film rental. We made more money in that eight weeks ourselves than the theatre had made in the previous 26 weeks.

26 weeks is a half a year. It is a long time.

Q. *Shane* was really a western?

A. *Shane* was a very fine picture.

Q. It was a western, wasn't it, in color?

A. Well, I don't classify *Shane* as a western. *Shane* is just a wonderful, wonderful picture, as far as I am concerned.

Then all the distributors started running [900a] up to see us, "Why can't we play our pictures in the Chinese Theatre?"

We had been trying to get pictures from them for the Chinese Theatre on an exclusive run before that, and they were too stupid to know that it would be good for them, but since then we have had no trouble in the Chinese Theatre.

After we started this policy and we had this kind of policy in the Wilshire Theatre, then some other people around town started to wake up. Warner Bros. decided this looked pretty good, so they started to do it.

The Hollywood Paramount Theatre decided to

(Testimony of Bert Pirosh.)

take a crack at it. It was running at 75 cents and losing a lot of money, and so he decided, "I am going to start bidding."

Q. That is Marco?

A. That is Marco Wolff. He charged \$1.80 on Guys and Dolls, and he made a lot of money on the picture, and he paid a lot of film rental to Metro-Goldwyn-Mayer.

So apparently the public will pay the admissions that you have to get. The theatre has to get these admissions in order to pay sufficient film rental for the distributor to want to sell the picture. The pictures are always available shortly afterwards at nominal admissions. However, the pictures that play in the Chinese Theatre open the day after the Chinese closes at much lower admission in several theatres, maybe four theatres, maybe 10 or 12 theatres.

So I do not think— I would not take a picture, Mr. [901] Mitchell, answering your question, for the Chinese Theatre day and date with the Loyola Theatre today. No, sir. I would demand clearance over the theatre.

Q. Now, with respect to the Inglewood area and the subsequent run theatres, you had a theatre there in 1950 and 1951 called the Inglewood.

A. Yes, sir. We still have it.

Q. You spoke about the profit ability of some of your theatres in Inglewood in your testimony, I think in response to a question asked by the court.

(Testimony of Bert Pirosh.)

What happened to the Inglewood Theatre?

A. During this period?

Q. In that period of time, yes.

A. Well, it was a sad story. The theatre had been playing, I think 28 days or 42 days after the first run theatres, the 7 day availability in Inglewood. It was a little sidestreet theatre, the kind of theatre that used to be profitable.

Two things happened. Television started to rear its ugly head and everybody in the world, it seemed to me, thought that Inglewood was a great place to build a new theatre.

We were making a lot of money in Inglewood. There were very few other theatres.

Then the Southside Theatre was built. Then the La Tijera Theatre was built. Then the Imperial Theatre was built. Then the Paradise Theatre was built. Then the Rio [902] Theatre was built. Then the Century Drive-In was built. Then the Centinela Drive-In was built.

All of these theatres, without any question, were far superior to our little Inglewood Theatre. There was really not much reason for anybody to pay money to sit in a little, antiquated theatre, and the public, having the good sense that it does, they stopped patronizing it, and instead of making money in the Inglewood Theatre, we started to lose money in the Inglewood Theatre. We have been losing money in it ever since. We would like to get rid of it. Nobody will take it off our hands. We have

(Testimony of Bert Pirosh.)

a losing theatre because all these new theatres are more attractive to the public.

I could not buy pictures for this little theatre ahead of a theatre like the Imperial, the La Tijera, the Paradise, the Century Drive-In, the Centinela, because they could afford to pay more film rental.

So the theatre on which we had been making substantial profits started losing money and has lost money ever since, merely because the public could find better places to spend their money.

Q. In 1950 and 1951, do you think that the Inglewood area was overseated or underseated?

Mr. Corinblit: Your Honor, I object to the question as calling for a conclusion of the witness.

Mr. Mitchell: That's right. [903]

The Court: We have got an expert theatre man here. If there is any expert, I think he is. Objection overruled.

The Witness: Well, I would say events have proved that in 1948 and 1949 the Inglewood area was underseated. There were not sufficient theatres in the area at that time to properly serve the public, because the Inglewood area had boomed in population, and during the war it was almost impossible to secure materials to build a new theatre.

After the war these theatres started to get built and some were built in bad locations which failed. The La Tijera, because of the competition from all of the new theatres that were built—if the La Tijera Theatre had been the only new theatre built in the

(Testimony of Bert Pirosh.)

Inglewood area. I would say it would still be in business today and making substantial profits. But it was badly located from the standpoint it was in a little backwash. There was no business community around it at the time. There were no homes immediately surrounding it.

When the Paradise Theatre was built, and the Southside Theatre was built, and the Century Drive-In and the Centinela Drive-In, the competition got too tough for a theatre that was in a bad location.

The Academy Theatre is in a very fine location, tapping the Leimert Park area in addition to Inglewood.

The Fox Theatre Inglewood is downtown in [904] Inglewood and there are a lot of people there, a lot of shops.

The United Artists Theatre is downtown.

The Southside Theatre was built in an area where there are a lot of homes, new homes, and a fairly thriving business district.

The Paradise Theatre was built in the midst of a business district that was going along pretty well, department stores were being built there or had already been built.

The La Tijera Theatre just went by the boards.

The Imperial Theatre had to close for some time for a while.

For the number of theatres that were available on this declining market, and we were on a declining market because of television, I would say that dur-

(Testimony of Bert Pirosh.)

ing a good part of 1950 and 1951, the area was over-seated.

I would say that now I think that the population growth in that area has about caught up with it, and I don't think there are too many theatres there now, except for a theatre like the Inglewood, which nobody goes to.

There is another little *there* there like the Ritz Theatre.

The Inglewood Theatre closed for a while, and then reopened, and we would run Friday, Saturday and Sunday, and then close it for a while. We just don't know what to do with it. [905]

So the theatre is obsolete. That is gone.

Q. Mr. Pirosh, during the period involved in this action, September 17, 1950, to September 17, 1951, did Fox West Coast or National have any contract or agreement with the defendants Loew's, Paramount, Warner, or Universal, other than film licensing agreements, or was it engaged in any conspiracy, combination, deal or understanding of any kind with Universal, Loew's, Paramount or Warner with respect to the licensing of pictures for first run Los Angeles or for any run in the Inglewood-Westchester area? [906]

The Court: You can answer that question "Yes" or "No."

The Witness: I will have to answer "No." I would like to expand on it, if I may.

Mr. Mitchell: That is all, your Honor.

(Testimony of Bert Pirosh.)

Redirect Examination

Q. (By Mr. Corinblit): May I have Exhibit 46—the 46-A group, 46-A-4.

Mr. Pirosh, I think this matter has been touched on in part but I want to have the matter re-stated again for the jury in the light of your testimony about the one theatre showcase matter.

You have in front of you a complete and comprehensive play-off of very single picture, other than for the defendant Paramount, that played in the Los Angeles area on first run from 1949—from 1945 through 1951, September of 1951.

It is subject to correction by counsel, but up to this point there has been no correction offered.

You have every single picture with a guess of probably you have one thousand pictures——

Mr. Mitchell: This is an argumentative speech, your Honor. He can ask a question without arguing to the jury.

Won't we have time to argue at a later date?

The Court: Well, Mr. Pirosh did a pretty good job of arguing a while ago and no objection was made. [907]

Mr. Mitchell: He is a witness and under oath but I don't believe Mr. Corinblit is either under oath or is a witness.

The Court: He is laying a foundation for the question. The objection is overruled.

Q. (By Mr. Corinblit): Now, even without looking at this exhibit, you know that during that per-

(Testimony of Bert Pirosh.)

iod from '45 to '51, 98 per cent, at least 98 per cent—certainly 95 per cent of the pictures played in this city in more than one theatre day and date. Would you say that is correct?

A. I would think that that is correct.

Q. And with respect to virtually every picture that played in a Fox theatre during that period it played more than one theatre on the first run?

A. During that period?

Q. Yes.

A. Yes, I would say that most of the pictures played in more than one theatre.

Q. Almost all of them? A. That is right.

Q. And from your observation and long experience in buying in the Los Angeles area, you know that is true with respect to pictures released by RKO—they played in more than one theatre?

A. That is right. [908]

Q. And with respect to pictures released by Paramount, they played in more than one theatre during this period? A. That is right.

Q. And with respect to pictures of Warner Bros., they played in more than one theatre?

A. That is correct.

Q. And with respect to pictures of Twentieth Century-Fox, they certainly played in more than one theatre? A. That is right.

Q. And with respect to the pictures of Columbia, they played in more than one theatre?

A. That is correct.

(Testimony of Bert Pirosh.)

Q. And with respect to the pictures of United Artists, they played in more than one theatre?

A. Yes.

Q. And with respect to Universal pictures, they played in more than one theatre, is that correct?

A. That is correct.

Q. And that was true during the entire period from 1945 to 1951?

A. Generally speaking that was true, sir.

Q. And as a matter of fact, your company, Fox West Coast, operated units of theatres on day and date first run which included anywhere from—well, you had one unit of five theatres, did you not?

A. For a while.

Q. For a while? A. Yes.

Q. For a long time you had a unit of four theatres, is that correct? A. Yes, sir.

Q. And for a long time you had a unit of three theatres, is that correct? A. Yes, sir.

Q. All right. Now, with respect to the unit of three theatres, you played all of these great pictures of Loew's, isn't that right? A. Yes, sir.

Q. And with respect to the unit of four theatres you played all these wonderful pictures of Twentieth Century-Fox, didn't you? A. Yes, sir.

Q. And with respect to the unit of four or five theatres, you played all of the pictures of Universal, didn't you? A. Our company did—I didn't.

Q. Yes, your company? A. Yes.

Q. I appreciate that. A. Yes. [910]

Q. With respect to all the wonderful pictures

(Testimony of Bert Pirosh.)

that Columbia put out, and they put out some wonderful pictures, you will have to agree——

A. Once in a while.

Q. Just once in a while? A. Yes.

Q. They played in at least two theatres?

A. I remember they played *Lost Horizon* in the Four Star Theatre. I think that was about the only good picture they had for two or three years.

Q. You think *Lost Horizon* was the only good picture they had for two or three years?

A. Two or three years. They had pretty bad product.

Q. They had a pretty bad product?

A. Yes, they did.

Q. Excepting *Lost Horizon*. Just taking for granted what you say about Columbia product, nevertheless maybe we will get into evidence the profits that Columbia and other companies earned on these pictures notwithstanding your statement they were no good. Even, as you say, they were no good, those pictures played in at least two theatres? A. Generally speaking.

Q. When those Columbia pictures played in the Fox theatres, they might play in as many as four or five theatres? A. Yes. [911]

Q. And the same thing is true with respect to RKO pictures. They always played in two theatres? A. Generally speaking.

Q. Except when playing in a Fox unit, they would play in four or five theatres?

A. That is right.

(Testimony of Bert Pirosh.)

Q. With respect to the pictures of United Artists, they regularly played in at least four theatres from 1945 on, didn't they?

A. I think they have a four-theatre unit.

Q. And when they played in the Fox unit they would play in probably, at least, three or four theatres?

A. I would think so.

Q. So, during the entire period from 1945 to 1951, all of the companies in this industry and your company and every theatre operator in this industry, operated on the theory of these first runs playing day and date, isn't that right?

A. You are talking about the Los Angeles metropolitan area?

Q. Yes.

A. Well, they were doing it but I don't think they were doing it right.

The Court: May I ask a question?

The Witness: Yes, sir. [912]

The Court: You gave us your opinion a little while ago as to the advisability of having only one theatre. Who established that policy for Fox West Coast as to multiple run or single run? Did you establish the policy or was the policy established by someone else?

The Witness: I established the policy in the Chinese Theatre. I had nothing to do with our first run theatres until September of 1952 as far as the buying or booking was concerned.

The Court: Prior to 1952 you personally didn't establish the policy?

(Testimony of Bert Pirosh.)

The Witness: I not only didn't establish the policy but I had no voice in it.

The Court: You had no voice in it?

The Witness: I used my voice but it never worked.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, in addition to this policy that existed, what would happen, Mr. Pirosh, if you were to bring into this courtroom the profits that your theatres earned playing on this multiple day and date policy? How many millions, how many hundreds of thousands and millions of dollars would the jury see if you were to bring in the profits of the theatres playing day and date?

Mr. Johnston: I object to that. It is highly argumentative and also improper.

The Court: Objection sustained. I think you can stipulate [913] that during certain times the motion picture industry has been a very profitable industry and at other times it has not been a profitable industry. I remember very well when Fox was in bankruptcy years ago.

Mr. Corinblit: I have no quarrel with that but I am talking about the multiple day and date policy that Mr. Pirosh has described.

The Court: We are not interested in the income of the theatres until we get to the question of damage, and then we are only interested in the comparison of the income of theatres in competition with the plaintiff theatre, the Paradise Theatre.

Mr. Corinblit: Yes.

(Testimony of Bert Pirosh.)

Q. Now, Mr. Pirosh, do I understand that you as a buyer and booker for Fox West Coast opposed the multiple day and date policy as the distributors set it up in this area—that is, you told them you were against it?

The Court: Mr. Corinblit, I think your question is subject to a number of interpretations. You say “as long as the distributors set it up.”

Now, that might be construed to mean that the distributors got together and agreed, but that isn’t the evidence. They did certain things. It is true that they did certain things that were parallel in many respects but as far as getting together and setting it up in a conspiracy that is a question [914] for the jury.

Mr. Corinblit: Yes.

The Court: And you are assuming something which I think the jury has to determine.

Mr. Corinblit: Yes.

The Court: Does that take care of your objection, Mr. Mitchell?

Mr. Mitchell: Excepting the distributors don’t act en masse nor does any one distributor act. You have got to talk about people and we can’t meet testimony unless we talk about people. I want a foundation laid when he talks about somebody at Warner’s or Paramount. He doesn’t talk to Warner’s or Paramount. He talks to a person and I want him to say when and where it was.

Mr. Corinblit: I didn’t hear that comment when Mr. Pirosh was making his long argument.

(Testimony of Bert Pirosh.)

Mr. Pirosh was very broad in his statements. I think this would be a good point——

The Court: Would you like to take the morning recess at this time?

Mr. Corinblit: Yes, if your Honor please.

The Court: Very well.

Ladies and gentlemen, we are about to take another recess and again it is my duty to admonish you that you are not to discuss this case with anyone, you are not to discuss it [915] among yourselves and you are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition, we will now stand in recess until ten minutes after 11:00.

(Short recess.) [916]

The Court: Is it stipulated the jury is present in the box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: Yes.

The Court: You may proceed.

Q. (By Mr. Corinblit): Mr. Pirosh, I think you testified with respect to the current practice of multiple day and date policy of the film companies as to pictures that customarily did and customarily did not play first run in a single theatre and then in a group of theatres.

With respect to the question—as a matter of fact, you have a pretty good recollection of what pictures did or did not play multiple run day and date,

(Testimony of Bert Pirosh.)

I suppose. I want to go through these in the last year.

The picture Blackboard Jungle played multiple day and date, correct? A. That is correct.

Q. Anchors Aweigh and Marauders played multiple day and date?

A. Anchors Aweigh was a re-issue.

Q. But they played multiple day and date on a re-issue first run?

A. If anybody played it, I guess it did.

Q. It played in the State, the Fox, the UA Pasadena, the Golden Gate, and seven drive-ins, is that correct? [917] A. That is so, I guess.

Q. The picture Love Me Or Leave Me played multiple run day and date, did it not?

A. That was offered because Metro thought they had a very good picture for one theatre first run showing. Unfortunately, at the time most of the theatres that Mr. Hickey considered suitable for a show case run were booked with other pictures on the date on which he wanted to open his picture.

I recall distinctly making an offer for the picture in our Vogue Theatre in Hollywood, which is a small theatre.

Metro, Mr. Hickey, rejected all the offers because he couldn't get the kind of a theatre he wanted, and decided as long as he could not get what he considered a good show case house, he then asked for offers on multiple run, that is correct.

Mr. Corinblit: Your Honor, I will move to strike the answer with respect to what Metro wanted and

(Testimony of Bert Pirosh.)

what Metro decided. I ask now, your Honor, that the witness try to testify as to the facts.

The Court: It may go out.

Q. (By Mr. Corinblit): Mr. Pirosh, you made an offer for the Vogue Theatre in that situation, and Mr. Hickey rejected it, is that correct?

A. For the one-theatre showing, that is correct.

Q. And thereafter it played multiple day and date, correct? [918] A. That's right.

Q. The picture Cobweb played multiple run day and date, correct? A. I believe it did.

Q. The picture Scarlet Coat and Wizard of Oz, which were probably re-issues, played day and date?

A. Well, Scarlet Coat was a new picture, but no good, and the Wizard of Oz was a re-issue, and they played multiple run day and date.

Q. It's Always Fair Weather played multiple day and date? A. Yes, it did.

Q. Bar Sinister and King's Thief played multiple day and date?

A. I think they played together. They were a couple of lousy ones.

Q. On multiple day and date? A. Yes, sir.

Q. The picture Trial played multiple day and date? A. Yes, it did.

Q. The picture Quentin Durward played multiple day and date? A. Yes, sir.

Q. The picture Tender Trap played multiple day and date? [919] A. Yes, sir.

Q. The double bill Honky Tonk and Billy The Kid played multiple run day and date?

(Testimony of Bert Pirosh.)

A. They were re-issues. They played multiple day and date.

Q. The picture 30 Seconds Over Tokyo and A Guy Named Joe were also re-issues and played multiple run day and date? A. I guess they did.

Q. Kismet played multiple run day and date?

A. Yes, sir.

Q. Kismet was a great motion picture, or wasn't it very good?

A. A very expensive motion picture that nobody wanted to see, and Metro—I was told Metro lost a lot of money on it.

Q. But it was an expensive picture and they played it multiple day and date, right?

A. Yes, they did.

Q. The picture Diane also played multiple day and date? A. I suppose it did.

Q. All right. The picture Ransom played multiple day and date? A. Yes, sir.

Q. The picture Forever Darling played multiple day and date? [920] A. Yes.

Q. The picture Last Hunt played multiple day and date? A. Yes, sir.

Q. The re-issue group Northwest Passage and Stratton Story played multiple day and date?

A. Yes, sir.

Q. The picture Forbidden Planet played multiple day and date? A. Yes.

Q. The picture The Swan, that is the one with Grace Kelly, and the picture with Alec Guinness played multiple day and date?

(Testimony of Bert Pirosh.)

A. And also a picture that did no business, but it played multiple, yes, sir.

Q. Tribute To A Bad Man played multiple day and date? A. Yes, sir.

Q. The Rack played multiple day and date?

A. And did so badly they pulled it out of release after it played, yes, sir.

Q. Bowhani Junction played multiple day and date? A. Yes, sir.

Q. The picture The Catered Affair played multiple day and date? A. Yes, sir.

Q. Well, I was going to add them up, but I think we [921] can do that for the purpose of the record and get the number of pictures.

Now, I think you will agree with me that the Blackboard Jungle, the first picture I mentioned, opened May 11, 1955, and the last picture—well, the picture covered by this group we have gone through runs to July 18, 1956, after this case opened, when the picture Catered Affair opened multiple day and date. Now—

Mr. Johnston: They were all in that period?

Mr. Corinblit: Yes, all in that period.

The Court: May I inquire, you are in 1955 and 1956, and we are concerned with the period of September, 1950 to September, 1951.

Mr. Corinblit: I realize that, your Honor, but Mr. Pirosh under the questioning of Mr. Mitchell explained elaborately, he took the position that now—we showed, of course, that there had been a change to multiple day and date policy, but Mr.

(Testimony of Bert Pirosh.)

Pirosh left the inference that there were only a few pictures involved in the multiple day and date, and the only purpose of this testimony is to show that presently a great majority of the pictures are playing multiple day and date as contrasted to the inference attempted to be left by Mr. Pirosh that there were only a few. That is the only reason.

The Court: If I understood Mr. Pirosh's testimony correctly, he stated that it was only the exceptional [922] picture in which they played in one theatre, the exceptional picture. The other pictures, why, they continued to play day and date. That is my understanding.

Is that true?

The Witness: Yes, sir. I said that the junk played in these units normally and most of the good pictures played in the one theatre.

The Court: The pictures that counsel has been reading, are they junk?

The Witness: They have three good pictures, Blackboard Jungle, Love Me Or Leave Me, on which they were unsuccessful in securing the kind of theatre they wanted for an exclusive run, and The Tender Trap. The rest of them were all no good. They have had a bad year, your Honor.

The Court: I don't think you are going to be very popular with the producers.

The Witness: Well, I am not very popular with Mr. Hickey. I told him that.

Mr. Corinblit: Now, you see, your Honor, it is in the light of that testimony that I think we ought

(Testimony of Bert Pirosh.)

to have, although it will not take very long to cover as a unit, because when we are all through, you will see Mr. Pirosh is calling everything junk that doesn't play in a single theatre, and if it plays multiple day and date, he calls it junk.

The Court: That is up to the jury to decide what Mr. [923] Pirosh testified to. They heard this testimony.

Mr. Corinblit: Yes, sir, but I would like to complete this and demonstrate it in terms of a reply to Mr. Pirosh's statement.

The Court: All right. Proceed.

Mr. Corinblit: Thank you, sir.

Q. Now, turning to the releases by the distributor Universal beginning in June, 1955, the picture *This Island Earth* played multiple day and date.

A. Yes, sir.

Q. *Ain't Misbehaving* and *Man From Bitter Ridge* played multiple day and date?

A. Yes, sir.

Q. *Fox Fire* played multiple day and date?

A. Yes, sir.

Q. *One Desire* and *Purple Mask* played multiple day and date? A. Yes, sir.

Q. *Francis In The Navy* played multiple day and date? A. Yes, sir.

Q. The *Francis* series, have they been pretty profitable?

A. They have been awfully bad in Los Angeles for three or four years. They do pretty good busi-

(Testimony of Bert Pirosh.)

ness in the Middle West where they don't know any better. [924]

The Court: Maybe they just understand a mule better in the Middle West.

The Witness: They like corn pictures. Ma And Pa Kettle and Francis are very good there but are not popular here.

Q. (By Mr. Corinblit): The people in the Middle West don't understand anything about the movies?

A. They like a different type of picture than are liked in a metropolitan area like Los Angeles. There is no reflection on the people in the Middle West.

Q. I think there is an awful reflection on the people in the Middle West, Mr. Pirosh.

The Court: Let's not argue this question. The jury is not asked to decide that question.

Q. (By Mr. Corinblit): The picture Kiss of Fire played multiple day and date?

A. Yes, sir.

Q. The picture Female On The Beach played multiple day and date? A. Yes, sir.

Q. To Hell and Back played multiple day and date? A. Yes, sir.

Q. The combination Lady Godiva and Naked Dawn played multiple day and date?

A. Yes, sir. [925]

Q. The picture Tarantula and Running Wild played multiple day and date? A. Yes, sir.

Q. The picture The Spoilers played multiple

(Testimony of Bert Pirosh.)

day and date? A. Yes, sir.

Q. The picture Square Jungle played multiple date and date? A. Yes, sir.

Q. Second Greatest Sex played multiple day and date? A. Yes, sir.

Q. There Is Always Tomorrow played multiple day and date? A. Yes, sir.

Q. All That Heaven Allows and Red Sundown played multiple day and date?

A. All That Heaven Allows?

Q. Yes, sir.

A. I think that played in the Wilshire Theatre.

Q. Well, we will check that. My record shows——

A. I am not positive of that fact. I know we did play a Universal picture in the Wilshire Theatre. [926]

Q. Now, the picture Benny Goodman Story played multiple day and date? A. Yes, sir.

Q. You don't really regard that as a bad picture, do you?

A. It did not do top business. It was a pretty good picture.

The Court: When you catalog a picture as being bad or good you are only looking at it from the boxoffice receipt angle, isn't that right? That is, if it brings in a lot of money it is a good picture and if it doesn't bring in a lot of money it is a bad picture?

The Witness: That is correct.

The Court: You are not passing on the quality

(Testimony of Bert Pirosh.)

of the picture from an artistic standpoint but you are passing on the quality of the picture from a monetary standpoint?

The Witness: I am strictly commercial.

Q. (By Mr. Corinblit): The picture *To Hell and Back* was a big grosser, was it not?

A. Very, very good.

Q. Very good? A. Yes.

Q. And that picture played multiple day and date?

A. Universal decided to do that. I tried to buy that picture on exclusive run and made an offer for it. [927]

Q. And Universal decided they didn't want it?

A. Universal, I think, made a mistake.

Q. But it did a great business?

A. Yes, a fine picture.

Q. All right. The picture *Creature Walks Among Us* and *Price of Fear* played multiple day and date?

The Court: Mr. Corinblit, you are talking so fast that I have trouble even knowing what you say. I don't know how the reporter can get this down. I don't think that the reporter can get it at all.

Q. (By Mr. Corinblit): *Creature Walks Among Us* and *Price of Fear*; *Never Say Goodby*, *World In My Corner* played multiple day and date, isn't that right, Mr. Pirosh?

A. I believe it did.

Q. *Toy Tiger* and *Rawhide Years* played multi-

(Testimony of Bert Pirosh.)

ple day and date? A. Yes, sir.

Q. And Away All Boats played multiple day and date? A. Yes, sir.

Q. Have you found out how the Away All Boats is doing?

A. I think yesterday at the opening—I heard the matinees yesterday were good. [928]

Mr. Corinblit: Now, the period covered by that group is roughly the same as indicated before, just in a period of a little over one year—June, 1955 to July of 1956.

Mr. Corinblit: It may be, your Honor, in order—I don't want to take the time but if I may submit to counsel for the opposition a proposed stipulation with respect to the remaining figures, then we can put them in in terms of the number of pictures in the last year that played multiple day and date as distinguished from the number of pictures that played on single run.

May I do that, your Honor?

The Court: You may see if you can get such a stipulation from the parties.

Mr. Johnston: Will we be able to enter into a stipulation as to the quality of the pictures?

Mr. Corinblit: No, I don't think so.

Mr. Johnston: I didn't think you would.

Mr. Corinblit: Can you stipulate as to the numbers?

Mr. Johnston: I think there should be some testimony as to whether they are good, bad or indifferent pictures.

(Testimony of Bert Pirosh.)

The Court: Proceed.

Mr. Corinblit: Thank you, sir.

Q. The Columbia pictures, Mr. Pirosh, during the last five years *Five Against The House* and *End of The Affair* played multiple day and date, is that correct? [929]

A. I suppose they did.

Q. *Prize of Gold* and *Chicago Syndicate* played day and date—played multiple day and date, is that correct?

A. I suppose they did.

Q. *Came From Beneath The Sea* and *Creature With The Atom Brain* played multiple day and date?

A. I think so.

Q. *Man From Laramie* and *Bring Your Smile Along* played multiple day and date?

A. Yes.

Q. Who was the star in that picture?

A. It was a good picture and did a lot of business. *Jimmy Stewart*.

Q. *Footsteps In The Fog* and *Gun That Won The West* played multiple day and date?

A. Yes.

Q. *Teenage Crime Wave* and *Apache Ambush* played multiple day and date?

A. Yes.

Q. *My Sister Eileen* and *Dual On The Mississippi* played multiple day and date, or was that a re-issue?

A. That was a brand new picture. That didn't do any business.

Q. And the picture *My Sister Eileen* was brought from a stage play, is that right? [930]

A. I don't know where they got it from but it didn't do any business.

(Testimony of Bert Pirosh.)

Q. All right. Count Three And Pray played multiple day and date? A. I suppose so.

Q. 3 Stripes In The Sun played multiple day and date? A. Yes, sir.

Q. Queen Bee and The Crooked Web played multiple day and date? A. Yes, sir.

Q. Lawless Street played multiple day and date? A. Yes, sir.

Q. Last Frontier and Inside Detroit played multiple day and date? A. Yes, sir.

Q. This Is Joe Macbeth and Fury At Gunsight Pass played multiple day and date? A. Yes.

Q. Battle Stations and Houston Story played multiple day and date? A. Yes.

Q. Hot Blood and Uranium Boom played multiple day and date? A. Yes.

Q. Rock Around The Clock and Overexposed played multiple [931] day and date?

A. Yes, sir.

Q. The picture Jubal played multiple day and date, did it not? A. Yes, sir.

Q. Who was in Jubal?

A. Jubal had Ernest Borgnine and Glenn Ford and one other, Rod Steiger and it fell flat on its face. It didn't do any business.

Q. Cockleshell Hero and Blackjack Ketchum played multiple day and date? A. I believe so.

Q. And the picture The Harder They Fall played multiple day and date? A. Yes, sir.

Q. Earth Versus Flying Saucers and The Werewolf played multiple day and date? A. Yes, sir.

(Testimony of Bert Pirosh.)

Q. Safari and Storm Over The Nile played multiple day and date? A. Yes, sir.

Q. All right. The period covered by that is from June, 1955 to August, 1956?

A. One good picture.

Mr. Johnston: What did he say? [932]

(Answer read.)

Q. (By Mr. Corinblit): Now, turning to the Paramount Company, the picture Mambo played multiple day and date? A. Yes, sir.

Q. The picture Hell's Island played multiple day and date? A. I suppose it did.

Q. And the picture Girl Rush played multiple day and date? A. Yes, sir.

Q. And the picture Ulysses—that was the picture with Kirk Douglas—played multiple day and date? A. Yes, a big flop.

Q. Lucy Gallant played multiple day and date? A. Yes, sir.

Q. And Hell's Horizons played multiple day and date? A. Yes, sir.

Q. House of Bamboo and That Lady played day and date, multiple day and date?

A. Are you reading the Paramount product?

Q. Yes. A. That is Fox.

Q. Pardon me, that is Fox. Now, I think it is also correct to state that 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 Paramount pictures that did play in a first run—that is [933] in a pre-release run prior to release to the multiple day and date—

(Testimony of Bert Pirosh.)

Mr. Mitchell: That is a big statement by counsel. If he wants to ask the witness about pre-release runs he might do so.

The Court: You are talking about "pre-release runs." This witness has never said that. The witness has never said that the exhibition of pictures at the Chinese Theatre, a single run theatre, was a pre-release picture. He never called it a pre-release.

Mr. Corinblit: Yes.

The Court: He calls it first run.

Mr. Corinblit: All right, your Honor. I will go into that matter for a minute.

Q. Mr. Pirosh, as far as the distributors are concerned, when they send you a letter——

Mr. Mitchell: Mr. Pirosh, don't answer the question until I object.

Q. (By Mr. Corinblit): When the distributor—— when you receive a letter from a distributor with respect to a picture that has first played in this so-called exclusive theatre and then goes into a multiple day and date theatre, does the distributor in his letter to you, does any distributor in their letters to you call that release, that multiple day and date release, a first run? [934]

Mr. Mitchell: I object to it on the ground it is not the best evidence. If we are going to go into letters, let us bring the letters out.

The Court: The witness testified a moment ago the distributors called it first run but he didn't call it first run. The first run was in the single theatre.

(Testimony of Bert Pirosh.)

He testified to that. The objection is overruled, but I will sustain an objection on the ground it has already been asked and answered.

Mr. Corinblit: All right, your Honor.

Q. Now, if the distributor refers, Mr. Pirosh, to the multiple day and date run as the first run, what does the distributor call the run before that?

Mr. Mitchell: I object to it upon the ground it is too generalized. I can't meet testimony about the distributor as if it were one person. [935]

The Court: I am going to sustain the objection. This expert witness is a buyer and he is not an expert distributor. He doesn't know what the distributors do except from hearsay.

Mr. Corinblit: All right, your Honor. Let me put it this way:

Q. When you receive a letter from the defendant, in this case Paramount, in which there was a reference to the run, before the run they called first run, what did they call the exclusive run?

Mr. Mitchell: Object to that on the ground it is not the best evidence.

The Court: Overruled.

Mr. Mitchell: If we are going into written documents we should have them.

The Court: Objection overruled.

The Witness: I am not positive what Paramount calls them. I do believe that at times they call them pre-release even though the pictures were playing all over the county at that time, and they obviously weren't pre-releases.

(Testimony of Bert Pirosh.)

Q. (By Mr. Corinblit): They called them pre-releases?

A. They might call them anything.

Q. Now, it is also true, isn't it, that the other distributors, the other defendants in this case, Twentieth Century-Fox, Universal, Warner's and Loew's, when they wrote you or told you about what they called this first run, that is in [936] the single theatre, they also referred to it as a pre-release, isn't that right?

A. I don't recall those companies telling me that.

Q. You recall Paramount but you don't recall anything with respect to the other companies, is that it?

A. I recall Paramount because I have had some arguments with them about it.

Q. I see. But you don't recall the others?

A. I don't recall it, no.

Q. Now, I think you testified that the picture *The King and I*, now at the Chinese, is playing at advanced admission prices, is that right?

A. Well, we are charging a certain price for the picture.

Q. But it is more than what you would—it is more than your regular first run theatre charge?

A. More than what first run theatre?

Q. Well, you have other theatres operating on the multiple first run policy. You do have such theatres?

A. We have theatres operating multiple first

(Testimony of Bert Pirosh.)

runs and second runs and exclusive first runs and subsequent runs.

Q. I am talking about the multiple first runs. The admission price at the Chinese for The King and I is higher than the price that you are charging regularly in the multiple first run theatres? [937]

A. We have no specific multiple first run theatres.

Pictures in this entire area are offered on a bidding basis and our Vogue Theatre in Hollywood, for example, may be playing an exclusive run one week, as they did on the Metro picture Lily and they ran it for three or four months.

And they may be playing day and date with a theatre downtown another week. Just two theatres. And one week if they can't get a picture with a limited number of theatres, they might be playing with the whole mish-mash—10 or 12 theatres, and they might be all different theatres.

Q. Perhaps we can put it this way. The Chinese is charging more than the Vogue? A. Sure.

The Court: Maybe you can get a stipulation that the Chinese charges more than any other motion picture theatre in this area as a general rule. I think they do. I don't know. I haven't been in the Chinese for many years.

The Witness: That is not true.

The Court: That is not true?

The Witness: No, sir.

The Court: All right.

Mr. Corinblit: We can't get a stipulation there.

(Testimony of Bert Pirosh.)

Q. (By Mr. Corinblit): Now, has the Vogue Theater ever increased its price when it went to an exclusive run as against playing on this multiple day and date? [938]

A. The Vogue Theatre charges what we think we should charge on any specific picture.

Q. But on an exclusive they have gone over on what they charge for multiple day and date?

A. I think when they ran *The Bad And The Beautiful* it was a dollar and a quarter.

Q. How about the other pictures?

A. I don't think they had any other exclusive runs in the last few years. The theatre is not good enough for that.

Q. Now, when Paramount referred to this first run, this exclusive run as a pre-release, what did you understand to be the meaning of the term "pre-release?"

Mr. Johnston: Your Honor, I think he has already gone into that—what Mr. Pirosh understood it to be. He testified to that some time ago.

The Court: Let me ask Mr. Pirosh a question.

Mr. Pirosh, regardless of whether the picture plays at one, two, three or four theatres it is a first run, isn't it?

The Witness: So far as I am concerned, yes.

The Court: And anything that comes after that is a subsequent run?

The Witness: I think obviously so.

The Court: So *The King and I* playing in the Chinese Theatre now, in your opinion, is first run?

(Testimony of Bert Pirosh.)

The Witness: I know it is first run. [939]

The Court: Anything that comes after that will be a second run?

The Witness: It has to be, or third.

The Court: In your opinion?

The Witness: Yes. I think it is pretty obvious that if another theatre plays the picture after it finishes in the Chinese Theatre that that theatre is not playing the picture first run in Los Angeles County.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, the distributors in their discussions with you take a contrary position, don't they?

Mr. Mitchell: Wait a minute. The distributors don't discuss en masse. I object to it on the ground no foundation has been laid. I want to know who he is talking about.

Q. (By Mr. Corinblit): Mr. Pirosh, you heard—you were buying and booking pictures for Fox from at least 1945 on and before then too, and you certainly heard the word "pre-release" during those dates, didn't you? A. I suppose I did.

Q. And Fox bought pre-releases during those dates, didn't they?

A. I still don't know what a pre-release is. If a picture is released it is released and if you play it ahead of that time it is just released earlier.

Q. I realize that, but I want to know how you did business [940] in that period. I do not want your opinion now, but how you did business during

(Testimony of Bert Pirosh.)

this period in your dealings with Loew's, for example. [941]

A. Yes.

Q. There would be—as a matter of fact, I think there might be three or four pictures a year which would be designated as pre-release or road show, isn't that right? A. I don't think so.

Q. You don't think so?

A. The only picture I can recall from Loew's that was designated as either pre-release or road show, and I don't know which they called it, if they called it either one, was during the period before 1945 and the picture was *Gone With the Wind*.

Q. Well, weren't there a group of pictures that would play, for example, at the Four Star or the Wilshire Theatre which you would refer to and Loew's would refer to as pre-release pictures, where you would raise your admission price and have a special whoopla arrangement that you referred to?

A. I don't remember—I didn't refer to them as pre-releases. Now, what Loew's referred to them as, you can find out from their records, I guess.

Q. Now, can you remember how Loew's referred to them to you?

A. They wanted to sell a picture.

Q. Did they ever refer to them as pre-releases?

A. Nobody refers to a picture as a pre-release in conversation. [942]

Q. I am asking during the period from 1945 to 1951, whether Loew's referred to these pictures I am talking about as pre-releases?

(Testimony of Bert Pirosh.)

A. I can recall no such reference.

Q. You don't recognize that during 1945-'51 there was in the motion picture industry an accepted term "pre-release" which referred to a play-off in a single theatre at advanced admission prices, or sometimes referred to them—and had reserved seats and sometimes not reserved seats at which—well, including those elements. Do you recognize the existence in the motion picture industry from 1945 to 1951 of such a term?

A. Well, if you are talking about the motion picture industry in New York, for example, any picture plays first run in one theatre. This is the only city in the United States to my knowledge where this kind of a crazy setup, crazy in my opinion, has evolved and a picture plays in San Francisco.

I don't care if Paramount calls it pre-release or post-release or first run, if it plays in one theatre in Seattle, if it plays in New York City, if it plays in San Francisco, it plays in one theatre.

I don't know what a pre-release is or after-release or anything else. I think it is just a lot of words.

Mr. Corinblit: I would just ask a final question on this point. Did Loew's use that word to you from 1945 to 1951, pre-release?

The Witness: I have already said that I do not recall that they used it.

Q. (By Mr. Corinblit): Do you recall whether any of the other distributors used that word to you from 1945 to 1951?

(Testimony of Bert Pirosh.)

A. I think I have testified I have heard Paramount use it.

Q. Any other distributor?

A. I do not recall hearing it from any other distributor.

Q. All right. Now, with respect to this matter of multiple day and date, I think you have described it, but it perhaps ought to be described a little further. What happens is that with respect to this area on the map, not in the central part of the city sometimes, but in circles all throughout the city, the pictures are offered for first run to any theatre that is willing to compete for it.

Now, Mr. Pirosh, under those circumstances, Fox in every one of these areas, wherever Fox has a theatre, has to compete with the independents that are in that area, is that right, for the picture in that area?

A. Fox normally does not license more than four theatres first run. They either license one theatre or four [944] theatres generally.

Q. All right.

A. I think they did release one or two pictures on this overall thing.

Q. All right. I want to turn now to the Fox West Coast, your company. I am talking about Fox West Coast now. Fox West Coast, your company, in each one of these areas has to compete against the other theatres for the multiple run in that area, is that right?

A. If we want to buy the picture.

(Testimony of Bert Pirosh.)

Q. If you want to buy the picture, you have got to compete for it, isn't that right?

A. Yes, sir.

Q. That is true with respect to each area in which this multiple first run is played?

A. There is no special area. Each distributor has evolved a system of its own. They determine what the areas are. In some areas they might say that in the San Fernando Valley, "We will license three runs," or they might say, "East of this street we will license one run, and west of this street we will license one run."

There are no hard and fast areas. Each distributor has its own system.

Q. Right.

A. So if you want to talk about a specific distributor, [945] I can answer the question.

Q. All right. My only point is, without having any area that any distributor designates within each such area, Fox has to compete against the other theatres in the area for the run, that is what I am driving at, and that is true, isn't it?

A. If I want to buy the picture, I have to make an offer.

Q. In competition with others in the area?

A. Depending on whether the others want to make an offer or not.

Q. Now, in 1951, as a matter of fact, from 1945 to 1951, excluding for a minute Universal, the theatres in this whole area, not a single theatre in the area, other than where a Fox theatre was located,

(Testimony of Bert Pirosh.)

had any opportunity to compete for first run pictures, did they, independent theatres?

A. Which area are you talking about?

Q. Well, you know that—well, let's talk about Loew's. Loew's prior to the fall of 1949, late 1949, was playing in three Fox theatres, the Los Angeles Downtown, the Egyptian in Hollywood and, if I am not mistaken, the Wilshire on Wilshire Boulevard. Not a single theatre in this whole area had an opportunity to license first run pictures at that time, did they?

Mr. Johnston: What whole area are you talking about? [946] Are you talking about the whole county?

Q. (By Mr. Corinblit): The Los Angeles metropolitan area, other than where those Fox theatres were located.

A. Loew's decided that they wanted to play downtown and in Hollywood—I don't know if it was in 1949 that there was the Wilshire Theatre. At one time they licensed three runs and at one time, as a matter of fact, they put in a fourth run and had to spend a lot of money on a theatre, and then took the pictures away after three months.

Q. Stop a minute, Mr. Pirosh.

Mr. Mitchell: Let him finish. Don't stop him a minute.

Mr. Corinblit: All right.

The Witness: They offered us the pictures in the Egyptian Theatre and we bought them. Whether

(Testimony of Bert Pirosh.)

they offered anybody else the pictures, I have no knowledge.

Q. (By Mr. Corinblit): You know that you never had to compete against any independent theatre in the entire metropolitan area for those pictures, isn't that correct, during the period 1945 to 1949?

A. All I know is this. We were offered these pictures in a theatre downtown, and we were offered the pictures in the Wilshire Theatre, perhaps, and we were offered the pictures in the Egyptian Theatre, and Loew's had very good pictures, and we were very glad to buy them. [947]

Loew's didn't offer me the pictures in the Academy Theatre in Inglewood to play day and date first run.

Q. We will get this clear first. During that period there was no competitive bidding for Loew's product for your theatres, is that right?

A. 1951?

Q. 1945 to the end of 1949?

A. To the best of my knowledge, there wasn't.

Q. So that before the multiple day and date, there was no competition between Fox and any other theatre for first run?

Mr. Mitchell: Now, wait a minute.

Mr. Corinblit: Just a minute, counsel.

Q. After multiple day and date, for the first run Fox was required to compete against independent theatres for first run, isn't that right?

Mr. Mitchell: Wait a minute, your Honor.

(Testimony of Bert Pirosh.)

The Court: Just a minute.

Mr. Mitchell: I object to that upon the ground that he has used the word compete in a different sense. Obviously, if there is competitive bidding, there is that kind of competition. If there is not competitive bidding, there is still competition because if Loew's likes the theatres of Fox, the Egyptian and the Loew's State or the Los Angeles, better than other theatres, those other theatres are competing, whether [948] they have actual competitive bidding or not, so we are using it in two senses. It is, therefore, an improper question.

Mr. Johnston: Your Honor, I submit it assumes facts not in evidence, and it also calls for a conclusion of this witness on matters he may or may not have any knowledge about. There is no foundation laid.

The Court: If he doesn't know, he can very easily say, "I don't know."

Mr. Mitchell: That is just what he did say, your Honor. He said he didn't know what Loew's was doing with regard to offering product.

The Court: You understand the meaning of the word compete?

The Witness: Yes. We were competing, I thought, with a lot of theatres at the time for patronage of the public.

Q. (By Mr. Corinblit): For patronage and the public? A. Patronage of the public.

Q. Not for pictures, though?

A. If you are asking me what we did——

(Testimony of Bert Pirosh.)

Q. Yes, sir.

A. We had enough pictures to run the Egyptian Theatre profitably and we didn't have to look for other pictures. If we had tried to buy Paramount pictures, we would have found out Mr. Marco Wolff had a franchise for Paramount pictures and we couldn't get the Paramount pictures first run in Los Angeles. [949]

Q. Mr. Pirosh, talking about the pictures that you had to make up this supply that you said was enough, you didn't have to compete against anybody for those pictures from 1945 to the end of 1949, did you?

A. In which theatres, sir?

Q. In the Egyptian, Loew's State and Wilshire Theatre, referring to Metro product.

A. In the Egyptian, we had a very good theatre and Metro wanted to sell us.

The Wilshire Theatre is a very fine theatre and Metro was getting a lot of film rental, and they wanted to sell us there.

In downtown Los Angeles, Metro was happy with the results in our theatres, and to my knowledge Metro was not offering the pictures to anyone else, but I don't know.

Q. To your knowledge, at that time, 1945, to the end of 1949, Metro wasn't offering those pictures to anybody else. That is a question that I believe you answered, but I just wanted to get that clear on the record.

A. I said that I don't know that they were.

Q. Now, as a matter of fact, that is true not

(Testimony of Bert Pirosh.)

only with respect to Metro, but it is also true with respect to Universal, that before the multiple day and date policy, you didn't have to compete with anybody for first-run pictures of Universal. [950]

After the multiple day and date policy, for the first time was Fox required to compete with anybody for a Universal first-run picture.

Mr. Mitchell: Your Honor, the record shows that Universal played multiple run ever since 1946. Universal has been playing its pictures in the Ritz and either the Vogue or the Guild and the Iris on the Hollywood Boulevard, in the United Artists Downtown, the United Artists Theatre, after 1947 or so, in the Culver Theatre in Culver City, and the Studio City Theatre, so they were playing multiple run all the time.

The Court: This witness knows those facts as well as you do, doesn't he?

Mr. Mitchell: But, your Honor, he frames his question in such a way as if there had previously been a situation where Universal was not playing first run, and therefore he assumes a fact not in evidence and the question is improper in form.

The Court: Objection overruled.

The Witness: Well, let me go back to Metro for a minute.

Q. (By Mr. Corinblit): Would you just——

A. I didn't answer the question fully before. I have been thinking a little. You asked if it were not true I did not have to compete for Metro pictures at

(Testimony of Bert Pirosh.)

any time until they [951] had multiple run. That is incorrect.

Q. That was not the question, sir. It was from 1945 to the end of 1949.

A. But you also said, as I recall, that we did not have—the independent did not have a right to compete for the Metro pictures until the multiple run was put in.

Q. No, I beg your pardon, Mr. Pirosh. I asked you whether to your knowledge you ever had to compete for Metro pictures during the period from 1945 to the end of 1949, and your answer was to your knowledge you did not, is that correct?

A. That answered that question, yes, sir.

Q. All right.

A. But I think you had another gadget in there.

Q. There will be another point. Now, I want to cover the Universal question. Do you understand my Universal question? Shall I restate it?

A. You have to tell me what is a multiple run.

Q. We will put it this way.

I think Mr. Mitchell's point is in part is well taken, your Honor, and I think one correction on the question ought to be made.

Universal, prior to the end of 1951, fall of 1951, played Universal pictures in Fox Theatres, for Fox Theatres and the United Artists Theatre downtown, is that correct?

A. From 1945 to 1951? [952]

Q. From approximately 1946 to 1951.

(Testimony of Bert Pirosh.)

A. They were playing in the Hill Street and Pantages Theatres in 1945.

Q. How about 1946 on?

A. Could have been in 1946.

Q. From 1946 to 1951. All right.

A. I am not sure of the dates, but some time during this period they did.

Q. Now, after 1951, they set up, still multiple day and date, but for the first time in the other areas theatres could compete against Fox for those multiple day and date runs, isn't that right?

A. Up until 1951, these areas you are talking about, Universal, I don't believe, was offering any first run at all to independents or to Fox.

Q. Mr. Pirosh, before 1951, Fox got Universal product without competing for it on first run.

After 1951, Fox had to compete for Universal product on first run, isn't that right?

A. In certain areas.

Q. First run.

A. Well, except that Universal, as I recall it, I think in 1951 they reduced the number of their areas.

Q. Do you think they reduced them in 1951?

A. Yes. I am not sure, but I think that they reduced [953] from five theatres to three theatres for a while. Now, I am not positive.

Q. You don't think they had as many as 11 areas in 1951? A. In 1951?

Q. Yes, the fall of 1951.

A. First run Los Angeles?

(Testimony of Bert Pirosh.)

Q. Yes. A. I don't think so, sir.

Q. Now, with respect to Twentieth Century-Fox product, prior to the termination of the interest of Twentieth Century-Fox in Fox West Coast, Fox West Coast got Twentieth Century-Fox product on first run without competing against anybody for it, correct? A. That is correct. [954]

Q. After Fox terminated its interests in Twentieth Century-Fox, you had to compete against other theatres for first run, is that it?

A. Yes, sir.

Q. You don't still get that product automatically? A. I bid.

Q. Fox product.

A. First run Los Angeles.

Q. Fox licenses it?

A. It is on a bidding basis in each of the areas.

Q. Now, from your own observations, it is really true with respect to the other distributors as well as—that is, it is true with respect to Warners and it is true with respect to Paramount, the defendants in this case, and the other defendants in this case, that before—Let us talk about Paramount first.

Before what they say is the end of their franchise, there was no competition for Paramount product after the multiple day and date is set up. There is competition for Paramount product first run, is that right?

A. Well, when Paramount had their franchise, Mr. Wolff was playing the pictures downtown and in Hollywood, and when the franchise expired—

(Testimony of Bert Pirosh.)

I think I have already testified that Paramount set up seven areas and licensed their pictures on a competitive bidding basis in each of the areas. [955]

Q. Now, Mr. Pirosh—

A. Or some pictures played one theatre, and that was licensed on a competitive bidding.

Q. Mr. Mitchell did take occasion to have you testify, a Fox West Coast man to testify, about the Paramount franchise yesterday.

When did you learn of the existence of that franchise agreement?

A. Oh, I think I knew about it 15 years ago.

Q. 15 years ago? A. Or more.

Q. All right. Did you know that in 1947 Paramount took the position that that franchise was illegal, was a violation of the antitrust laws?

A. I knew they were having an argument.

Q. Did you know that that was the position that Paramount took?

A. I think I heard something about it.

Q. Now, did you know Mr. Pirosh, when that—when the legality of that franchise was litigated in this courtroom before Judge Westover, that Judge Westover told Paramount that that franchise was not exclusive? Did you know that?

A. No, sir.

Q. You didn't know that?

A. No, sir. [956]

Q. Did you know that even after Judge Westover told Paramount that that franchise was not exclusive, Paramount refused to permit the Para-

(Testimony of Bert Pirosh.)

dise Theatre or any other independent theatre to play day and date with Downtown Paramount and Hollywood Paramount?

A. All I know is the pictures continued to play.

The Court: You can answer that, "I don't know," unless you do know of your own knowledge. You can say, "I don't know."

The Witness: I don't know.

The Court: There is no disgrace in admitting you don't know.

The Witness: I recognize that.

Q. (By Mr. Corinblit): And did you know that even though Judge Westover told Paramount that that franchise was not exclusive, that Paramount appealed from Judge Westover's ruling in order to get some other court to state that Judge Westover was incorrect?

Mr. Mitchell: Well, now, your Honor, isn't that improper? I think he should be instructed not to do things like that.

Perhaps you should tell the jury what you held, your Honor, and leave the mystery out of this and that kind of argumentative statement.

The Court: I think it is argumentative as far as this [957] witness is concerned.

I don't think this jury is interested in any appeal that was taken.

Mr. Corinblit: Very well, your Honor. I will withdraw the question.

The Court: You have gotten before the jury now that Paramount contended that the franchise was

(Testimony of Bert Pirosh.)

illegal but the court held it was not illegal, and that was sustained on appeal and that is all there is to it.

Mr. Corinblit: There is the other element, your Honor. Your Honor held the franchise was not exclusive.

The Court: I don't remember that. I would have to go back and look at the opinion.

Mr. Corinblit: Yes, it is in your judgment and it is marked as an exhibit for identification by the defendants in this case—I believe in this case. I know it is marked in other cases.

Mr. Westbrook: It is so marked.

The Court: I might advise the jury that after this court makes a determination or even after you bring in a verdict, that is not final by any means.

Within a certain length of time the parties have a right to appeal, and it is not final until the last appellate court has ruled upon the matter. And if it goes to the Supreme Court there is not a final adjudication until the [958] Supreme Court acts upon it.

Assuming in this case there is a judgment either one way or the other, for the plaintiff or for the defendants, and then there is an appeal taken, the judgment isn't final. The appeal goes to the Ninth Circuit headquarters, which is in San Francisco, and it may be two years before the Ninth Circuit will pass upon the case.

Supposing the Ninth Circuit sustains the finding of the jury, then it is possible to take a writ of certiorari to the Supreme Court, and if the Supreme

(Testimony of Bert Pirosh.)

Court allows the writ to be taken, it may be two or three years before the Supreme Court gets around to deciding the case.

So, there may be a lapse here of two or three or five years between the time you make a decision and your decision is finally final.

So, all that is necessary for you to know, as far as the Partmar case is concerned, is that in that case Paramount took the position that the franchise which they had granted to Fanchon and Marco was illegal, but this court held against them. This court held that it was legal, that it was a valid franchise. And an appeal was taken, and that case went to the Supreme Court, did it not?

Mr. Johnston: Yes, your Honor.

The Court: And finally it was sustained, the ruling in the case was sustained by the Supreme Court.

Mr. Mitchell: The appeal that was sustained in the Supreme Court was taken by the other side. Everybody appealed in that case.

The Court: Nobody was satisfied with the decision so everybody appealed and finally the outcome of the case was that the decision of the lower court was sustained.

Mr. Corinblit: Your Honor, before you conclude that, I would like to hand up to you, sir, your judgment in that case, which has been marked as an exhibit for identification, in which you ruled that the franchise was not exclusive.

The Court: Let me see what we have here.

Mr. Mitchell: No ruling was made about the

(Testimony of Bert Pirosh.)

clearance problem, your Honor. Let me call your attention to that fact. You made a ruling——

The Court: Let us see what the findings were.

Mr. Mitchell: Nothing was said about the clearance other than that the clearance was valid. I think you said the clearance was valid. What its effect was you didn't rule.

Mr. Johnston: I think we should have the opinion of Judge Westover when we are talking about the judgment.

The Court: The opinion is not the judgment.

Mr. Johnston: It is a pretty good statement of principles.

Mr. Corinblit: Your Honor, this is the judgment I am [960] referring to.

The Court: May I see it?

Mr. Mitchell: You had better look at the findings, too, because that contains your statement about clearance.

Mr. Westbrook: It is on page 12.

The Court: This exhibit 13 which has been marked for identification is the judgment in the Paramount case and provides in part as follows:

"The agreement between Paramount Picture, Incorporated and Partmar Corporation guaranteed by Fanchon and Marco Incorporated, is a valid and subsisting agreement in full force and effect."

Paramount contended that the agreement was void and illegal.

"Said agreement provides for the privilege to exhibit first run at the downtown Paramount Theatre

(Testimony of Bert Pirosh.)

all Paramount pictures upon their general release.

“Such first run privilege is not, however, exclusive and any number of simultaneous first runs may be licensed to other parties to the runs concurrently therewith.”

That was the judgment entered in that case.

Mr. Mitchell: Will you read to the jury your finding with respect to clearance, which is finding 6(b)? It is on page 3 of the findings. [961]

Mr. Corinblit: I would like the opportunity of arguing the question of findings here as distinguished from the question of your judgment.

Mr. Mitchell: This is a conclusion of law, really. It is in the conclusions of law.

Mr. Corinblit: May I see it, counsel?

Mr. Mitchell: Yes.

The Court: I think it is proper to read this finding.

By the way, the Partmar case was not tried before a jury. If it had been tried before a jury I wouldn't have made findings of fact and conclusions of law and I wouldn't have signed the judgment, because this was a question of fact.

Now, in this case you are the ones who are going to determine the facts and not the court. In that case the parties had confidence in the court and the court was the one who decided the questions of fact as well as the questions of law, so at the conclusion of the case and at the conclusion of all the evidence we prepared and signed certain findings of fact and conclusions of law and the judgment was based

(Testimony of Bert Pirosh.)

upon those findings of fact and conclusions of law.

Now, there were many issues raised in the Partmar case. One of the issues was in regard to this question of clearance, which you heard about.

Conclusion of law 6(b) says: [962]

"The clearances accorded to Partmar by Paramount pursuant to said franchise agreement was reasonable and lawful."

In other words, holding again that the franchise agreement was not illegal in itself.

Mr. Corinblit: The plaintiff will take exception to the remarks of the court.

The Court: You may have an exception.

It is 12:00 o'clock and we will now take our noon recess and again you must remember the admonition of the court heretofore given. You are not to discuss this case with anyone, you are not to permit anyone to discuss it with you and you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition we will now recess until 2:00 o'clock this afternoon.

(Whereupon at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same date.) [963]

Thursday, July 19, 1956, 2:00 P. M.

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: Yes.

The Court: You may proceed.

Mr. Mitchell: Your Honor, you stated to the jury certain facts with respect to your conclusions of law and the judgment in the Partmar case. Would it be proper for you, also, to state that the conclusions of law were signed and filed on June 18, 1951, and that the judgment was entered June 19, 1951?

The Court: That is the judgment in this court?

Mr. Mitchell: That is correct, sir, in the Partmar case.

The Court: Well, I don't think there is any dispute as to that, is there?

Mr. Corinblit: No, sir. I think, just to complete the record, could we have, then, the date on which the notice of appeal was filed and the date on which the notice of appeal was withdrawn?

Mr. Mitchell: Just a minute.

Mr. Corinblit: I think you have got it here.

The Court: Notice of appeal which was filed by which party? [964]

Mr. Corinblit: Both sides.

The Court: Both sides didn't withdraw, because the case went to the Supreme Court.

Mr. Corinblit: I am just referring to the withdrawal by Paramount.

The Court: Paramount?

Mr. Corinblit: Yes, sir.

Mr. Westbrook: Your Honor, I think Mr. Corinblit refers to two notices of appeal, one of which

was filed on behalf of the Paramount Corporation in that case. The date of filing of notice of appeal by the Paramount Corporation is July 18, 1951. By stipulation, approved by your Honor, that appeal was withdrawn or dismissed on July 31, 1951.

There was, however, a notice of appeal by Partmar Corporation, the subsidiary of Fanchon & Marco, Inc., Mr. Marco Wolff's corporation, which was filed on July 16, 1951, and that appeal remained pending for some time thereafter.

Mr. Corinblit: The appeal referred to by Mr. Westbrook, the last appeal, was an appeal from the decision of your Honor dismissing the counterclaim, not any appeal from the decision of the court on the action filed by Paramount. Isn't that correct, counsel?

Mr. Mitchell: That's right.

Mr. Corinblit: All right. [965]

BERT PIROSH

the witness on the stand at the time of the recess, having been previously duly sworn, was examined and testified further as follows:

Redirect Examination—(Continued)

Q. (By Mr. Corinblit): Mr. Pirosh, I don't believe we completed. It will take us just a few minutes to complete the multiple day and date exhibition in Los Angeles for that same period that I referred to.

I want to turn to Fox product. The pictures House of Bamboo and That Lady played multiple day and date, correct?

(Testimony of Bert Pirosh.)

A. I think that it played at four theatres.

Q. Including a theatre in the Westchester area, the Loyola Theatre? A. Yes.

Q. And the picture *Life In The Balance* played in that same group of theatres?

A. I believe that it did. Now, let me correct that. I am not sure if it played in the same theatres.

Q. The Los Angeles, the Fox, the Uptown and the Loyola. Does that sound correct to you? If you don't remember, why——

A. If that is what it says, I guess it is, but I don't [966] know if *House of Bamboo* played in the same theatres as *Life In The Balance*.

Q. You don't remember that?

A. No, sir, I don't remember it.

Q. The picture *Deep Blue Sea* played in that group of theatres?

A. That was a second run. I think that picture played in the Wilshire Theatre first run. [967]

Q. *Deep Blue Sea*.

A. I believe it did, sir.

Q. Are you certain of that?

A. No, I am not positive.

Q. All right. The picture entitled *Bottom of The Bottle* played in a group of four theatres?

A. Yes, sir.

Q. And the picture *Man Who Never Was* played in a group of four theatres? A. Yes, sir.

Q. A picture entitled *Revolt of Mamie Stover*

(Testimony of Bert Pirosh.)

played in a group of four theatres? A. Yes, sir.

Q. And the picture *Hilda Crane* played in a group of four theatres? A. Yes, sir.

Q. *Mohawk* played in a group of 11 theatres?

A. That played in a lot of theatres.

Q. The picture *The Proud Ones* played in a group of four theatres? A. Yes, sir.

Q. And the picture *23 Paces to Baker Street* played in a group of four theatres?

A. I believe that is correct.

Q. Now, the picture the figure 6th, meaning 6th of [968] June, opened at the Chinese, didn't it?

A. It played in the Chinese Theatre first run.

Q. For how long?

A. I think for four weeks or a little longer.

Q. And then it opened in that group of four theatres?

A. And then it played second run in those theatres.

Q. Now, referring to the pictures of RKO, the picture *Rage At Dawn* played multiple day and date——

Mr. Mitchell: Is this material to this action, what RKO did first run in 1955? They are not a party to this action at all and I object upon that ground.

Mr. Corinblit: It is just part of completing the picture and a refutation of the statement made by the witness.

The Court: Objection overruled.

Q. (By Mr. Corinblit): *Rage At Dawn* played

(Testimony of Bert Pirosh.)

multiple day and date? A. I presume it did.

Q. The picture Son of Sinbad also played multiple day and date? A. Probably did.

Q. Pearl of The South Pacific also played multiple day and date? A. I imagine it did.

Q. The picture Tennessee's Partner played multiple day and date? [969]

A. I would think that it would.

Q. And the picture Texas Lady played multiple day and date? A. Probably did.

Q. The picture Slightly Scarlet played multiple day and date? A. I imagine it did.

Q. The picture Conqueror played in three theatres, right? A. Yes.

Q. The picture Glory and Cash On Delivery played multiple day and date? A. Yes, sir.

Q. The picture Bold And The Brave played multiple day and date? A. Yes, sir.

Q. Great Day In The Morning played multiple day and date? A. Yes, sir.

Q. Turning now to the pictures of the period covered—the period May 18, 1955, to July 11, 1956, and the pictures covered—the period covered by Fox is from July 13, 1955, to the 6th of June, 1956.

The pictures of United Artists, the picture Kiss Me Deadly played multiple day and date? [970]

A. Kiss Me Deadly?

Q. Yes. My record shows it played in the Los Angeles, Fox, Hollywood and Ritz. Does that refresh your recollection on that? A. It could.

Mr. Mitchell: I object to the question about

(Testimony of Bert Pirosh.)

United Artists Theatre. That company is not a party defendant in this action.

The Court: Overruled.

Mr. Mitchell: It has no place here.

Q. (By Mr. Corinblit): Kiss Me Deadly played multiple day and date? A. I imagine so.

Q. The picture Big House U.S.A. and Stranger On Horseback played multiple day and date?

A. (No answer.)

Q. It played the Iris, El Rey, Academy at Inglewood, do you remember that? A. I think it did.

Q. The picture Top of The World and Bullet For Joey played multiple day and date?

A. Probably—well, I think it played the four theatres.

Q. You don't recall?

A. I don't recall how many theatres that kind of stuff [971] played.

Q. The picture The Kentuckian played four theatres, is that correct?

A. I believe that it did.

Q. The picture Desert Sands and Fort Yuma played four theatres? A. I believe it did.

Q. The picture Gentlemen Marry Brunettes and The Naked Street played a large group of theatres, that is three conventional and eleven—well my record shows it played 14 Fox Theatres, is that right?

A. It played in a lot of theatres.

Q. I mean 14 Fox Theatres?

A. It is quite possible.

(Testimony of Bert Pirosh.)

Q. The picture *The Killer Is Loose* played in four theatres? A. I believe so.

Q. The picture *Commanche* played in four theatres? A. I think that is correct.

Q. The picture *Frontier Scout and Crime Against Joe* played in nine theatres?

A. It played in quite a few theatres.

Q. The pictures *Black Sleep* and *Creeping Unknown* played in a group of theatres multiple day and date?

A. Yes, sir, I think that played a lot of small houses. [972]

Q. A picture *A Kiss Before Dying* and *Star of India* played four theatres? A. I think so.

Q. Finally the picture of Warner Bros., the picture *Tall Man Riding* played in a group of—played multiple day and date?

A. Probably did.

Q. The picture *Pete Kelly's Blues* played multiple day and date? A. I think it did.

Q. The picture *The McConnell Story* played multiple day and date? A. Yes, sir.

Q. And the picture *Blood Alley* played multiple day and date? A. Yes, sir.

Q. And the picture *Rebel Without A Cause* played multiple day and date? A. Yes, sir.

Q. And the picture *I Died A Thousand Times* and *Illegal* played multiple day and date?

A. Yes, sir.

Q. And the picture *Sincerely Yours* played multiple day and date? A. Yes, sir. [973]

(Testimony of Bert Pirosh.)

Q. And the picture Court Martial of Billy Mitchell played multiple day and date?

A. That is right.

Q. The picture Hell On Frisco Bay and Target Zero played multiple day and date? A. Yes, sir.

Q. And the picture Lone Ranger played multiple day and date? A. Yes, it did.

Q. And the picture Miracle In The Rain played multiple day and date? A. It did.

Q. The picture Serenade played multiple day and date? A. Right.

Q. And the picture The Searchers and Our Miss Brooks played multiple day and date?

A. That is right.

Q. And the picture Animal World and Goodbye My Lady played multiple day and date?

A. Yes, sir.

Q. And finally the picture Santiago played multiple day and date? A. That is correct.

Mr. Mitchell: You didn't purport to have read—you don't purport to have read all the pictures of all these companies?

Mr. Corinblit: No, just the pictures that played multiple day and date in terms of numbers.

I will be glad and I think it appropriate to complete the list of these companies that played first at one theatre. I think I read that list with respect to Paramount.

There were 13 pictures of Fox. No picture of RKO during the period from May '55 to July '56 and one picture of United Artists from the period

(Testimony of Bert Pirosh.)

May 1955 to July 1956 and not a single picture—pardon me, with the exception of one picture, Helen of Troy, played in one theatre. But all of those other—no one theatre played multiple day and date Warners.

The Witness: Well, now——

Q. (By Mr. Corinblit): During that period.

A. Now, you have got the multiple runs down to as low as three theatres.

Q. Pardon me.

A. You have the multiple runs down as low as three theatres.

Q. Yes, sometimes three, four, seven, nine and eleven. A. Yes.

Mr. Mitchell: Your definition of a multiple run is two theatres——

Mr. Corinblit: I think we have that straightened out.

Mr. Mitchell: I think the witness was asked questions [975] about — for instance the Loew's Company playing the Egyptian and Loew's State and at that time we were talking about two being multiple run, so I am assuming anything more than one is multiple. That is the way the witness assumed it also. [976]

Q. Well, all right. I think we should get this absolutely straightened out. Every picture that I have mentioned to you, Mr. Pirosh, was played in more than two theatres? Every picture I described as multiple day and date was played in more than two theatres?

(Testimony of Bert Pirosh.)

Mr. Westbrook: May I see your list, counsel?

Mr. Corinblit: Yes, sir.

Mr. Mitchell: Does the witness know that?

Q. (By Mr. Corinblit): Do you know that, Mr. Pirosh? A. I assume it is so.

The Court: Will you keep your voice up?

The Witness: I think that is true.

Q. (By Mr. Corinblit): Now, turning for a minute, Mr. Pirosh, to a fact that you may or may not be familiar with, looking at the first run revenue received or realized by your company or, if you know, the distributors, why, you can tell about that, too, comparing the first run revenue that is realized for a single week when played by two theatres, one or two theatres on first run day and date, as compared to the first run revenue realized by a group of theatres on multiple day and date, you don't have any doubt that the amount of first run revenue in the group of theatres exceeds the amount of first run revenue when it only plays in two theatres, do you?

A. Well, this will have to call for an assumption on my part, because the same picture obviously could not have played [977] in one or two theatres and also in a group.

You are asking me if Blackboard Jungle had played in two theatres, would it have grossed as much as it did in 10 or 11 theatres?

Q. In the first week.

A. In one week?

Q. Yes.

(Testimony of Bert Pirosh.)

A. I would say obviously it wouldn't.

Q. It wouldn't. A. In the one week.

Q. Right. And similarly, if you compared it probably for two weeks, the same thing would be true, is that right?

A. I would say on a picture like Blackboard Jungle, that would be correct.

Q. Right. A. For those two weeks only.

Mr. Mitchell: What did you say?

The Witness: For those two weeks only.

Q. (By Mr. Corinblit): Now, there are a couple of other aspects of this show case matter that you discussed that I am going into. First, I think you testified you tried to get the picture Peter Pan on exclusive run, is that right? A. Yes, sir.

Q. You weren't able to get it in the Chinese on exclusive run. [978] A. That is correct.

Q. What you were asking for on that exclusive run was that you wanted to play Peter Pan in the Chinese Theatre for a long run, is that right?

A. For at least six or eight weeks.

Q. For at least six or eight weeks. The Chinese Theatre is located up here on Hollywood and Highland, right, a little off? A. West of Highland.

Q. Now, that picture appealed mostly to children, that is what it was for, is that right?

A. Peter Pan, I think, appealed to a lot of people.

Q. But it had a great appeal for children.

A. It had appeal for children, and in addition great appeal to adults.

(Testimony of Bert Pirosh.)

Q. That is correct, is it? Under the kind of policy you described as being advisable—incidentally, what happened to *Peter Pan*? Where did it play? Well, I will withdraw that question first.

Under your policy for eight weeks this picture would have played in the Grauman's Chinese only, and under your policy anybody living in the greater Los Angeles area, including families with children, would have to go to Hollywood to see *Peter Pan*, is that right?

A. That is correct, during the period that it was in [979] the Chinese Theatre.

Q. You had in mind a period, as you put it, of about eight weeks. As a matter of fact, in terms of convenience to the members of the public, this multiple day and date policy in the metropolitan area, for people who would like to see a picture when it first comes out, is far more convenient for members of the public than is the single theatre policy that you defined, isn't that correct?

A. Well, if that is correct, then I would say that perhaps 100 theatres in Los Angeles should play the picture instead of 11. Perhaps every theatre in the Inglewood-Westchester area should play the same picture and get it done with in one week.

I don't think it is correct.

Q. But in terms of convenience to the public, it is certainly more convenient to the people in the Los Angeles metropolitan area if on first run, for people who want to see a picture on first run, to have first run theatres playing it throughout the

(Testimony of Bert Pirosh.)

city than it is to have it played in a single theatre in Hollywood, isn't that correct? That is for convenience to the public, the people who live in this city.

A. I would not say so. If a picture is playing in an inferior theatre on this day and date first run in one of these areas, I don't see that the public is any better off than if the picture plays seven days later in a fine theatre [980] in the area.

Q. But you describe first run policy that you were talking about in terms not of a week, but in terms of six, eight, or 10 weeks in the Chinese Theatre, didn't you? A. That is correct, sir.

Q. All right. I am talking about when the public gets a chance with this multiple day and date policy to have within a short range, a fairly short range, some place where they can go to see that picture first run, that is much more convenient to the public than the arrangement you describe, isn't that right?

A. I don't think so. I think that the public is better off seeing a picture like Peter Pan in a theatre like the Chinese or the Pantages Theatre, than in some rat traps in one of the neighborhoods.

Mr. Corinblit: Now, may I have that list again, please?

Q. You don't think the Loyola Theatre is a rat trap, do you?

A. I think it is a nice neighborhood house.

Q. Nothing wrong with seeing a picture in that theatre?

(Testimony of Bert Pirosh.)

A. You don't see as well as if you were seeing it in the Chinese Theatre. You don't see six track stereophonic sound. You don't have as big a screen, and it is not as fine a theatre. [981]

Q. You don't think that a theatre like the United Artists in Inglewood is a rat trap, do you?

A. I think it is a fair theatre.

Q. I beg your pardon?

A. I think it is a fair theatre.

Q. As a matter of fact, all these theatres that have played day and date, multiple day and date, would at least come in your classification of a fair theatre? A. No.

Q. They wouldn't. How about the Picwood Theatre?

A. The Picwood Theatre is a good theatre, pretty good theatre.

Q. The Village Theatre?

A. It is a good theatre.

Q. The Fifth Avenue Theatre?

A. A fair theatre.

Q. Encino?

A. Fair. But there are also theatres like the Roxie Theatre in Glendale that play pictures on day and date first run. There are theatres in Downey and there are theatres scattered all around this area that are currently playing some pictures on day and date first runs that I do not consider first-class theatres.

Q. Now, Mr. Pirosh, have you ever heard the term in the motion picture business of milking a

(Testimony of Bert Pirosh.)

picture? [982] A. I have heard the term.

Q. What do you understand by the meaning of that term?

A. Well, I never agreed with the term.

Q. What did you understand that it meant?

A. Milking a picture is if a theatre plays the picture and exhausts all of the box office possibilities so that the next runs cannot do business.

Q. Have you heard described the policy that you discussed of the exclusive first run in the Chinese as being a policy which really and truly is a milking policy to prevent any other theatres from having any revenue?

A. I have not heard it so described and, as a matter of fact, I think that pictures like *Shane* and *Seven Year Itch*, that played in the Chinese Theatre for limited runs, did better business when it got into these neighborhoods than at least 90 per cent of these so-called first runs in the same theatres, so I don't think that the pictures were milked in the Chinese.

There apparently is a tremendous potential for a picture that is sold to the public and where the public's interest in the picture has been whetted.

Q. I think you used, in describing the first run show case theory, the term charity gimmick. I think you used that term with respect to the picture *Trapeze*. I wonder, are there other situations in first run, in this exclusive first run, [983] that attach the so-called charity gimmick?

A. I don't think I attached the word gimmick

(Testimony of Bert Pirosh.)

to it, and if I did, I was wrong. Yes, there have been charity premieres for the benefit of charity at a number of theatres on important pictures.

Q. Certainly not only in Fox theatres?

A. I didn't mean to give that impression.

Q. Has this ever happened, Mr. Pirosh, or did this happen during the period you were describing this exclusive show case matter, that you distinguish a premiere from the opening of a picture in a group of theatres, that is, the first day the premiere in a single theatre, and then the next day joined in by a group of theatres? Has that happened from time to time?

A. I don't consider that a show case run.

Q. You don't consider that a show case run, but it has happened that way, that pictures have been released in that way?

A. Yes, there have been some pictures where there was a premiere on Tuesday night, say, and the picture opened in two or more theatres the following day.

Q. All right. Now, in that way you get the so-called publicity of something like this Ed Sullivan matter that had to do with the picture *Trapeze*, while at the same time a multiple day and date arrangement is used, isn't that right? [984]

A. I don't think it has been used on pictures that opened in 11 or 12 theatres the next day.

Q. But more than one theatre, is that right?

A. Very, very seldom. Occasionally, yes.

Q. Now, I will turn a minute to the 1950-51

(Testimony of Bert Pirosh.)

period, and the Inglewood area, and particularly the bidding matter that you went into yesterday.

I will show you first Plaintiff's Exhibit—I beg your pardon—Fox Defendants' Exhibit B, which covers the period from August 29, 1950, to July—I beg your pardon—from July 5, 1950 to August 29, 1950, and ask you to run through this, Mr. Pirosh, and see if you find any bids in there for Warner's pictures.

A. (Witness examining Exhibit.) [985]

Mr. Mitchell: Isn't it conceded that during that time the evidence is that Warner Bros. wasn't offering its pictures on a formal bidding basis?

Q. (By Mr. Corinblit): Is that your testimony?

Mr. Johnston: I will stipulate I didn't find any bid letters to Warner Bros. in that whole group I presented to Mr. Pirosh yesterday.

Mr. Corinblit: I would like to have the witness' testimony on that.

The Witness: I stated, I believe, that so far as I can recall Warner at this time was not offering its pictures on a competitive bidding basis, and to the best of my memory were negotiating competitively.

The only thing I find in here—I find no bid letters, but I do find a confirmation of a conversation in which an offer of ours was accepted.

Q. (By Mr. Corinblit): So the testimony is, as I understand it, that during this period covered by Defendant's Fox Exhibit B, you did not license

(Testimony of Bert Pirosh.)

pictures from Warners as a result of a competitive bid?

A. To the best of my recollection, yes.

Q. Now, will you state, Mr. Pirosh—I will turn for a moment now to the—as a matter of fact, you testified that that was true, that you did not license Warner pictures as a result of a competitive bid during this entire period [986] from August, 1950 to September, 1951, is that correct?

A. I think that I testified, according to my best recollection, Warner was not offering their pictures on a formal competitive bidding basis at this time.

Now, if Warner's were, then I would like to have my memory refreshed. As of now, I can remember no competitive bids on Warner's in this area at this time. And in glancing through these, from which I did refresh my recollection as to a number of the companies, as to what had happened seven years ago and six years ago, I found no bids for Warner pictures in these bidding letters.

Q. Now, turning—let us turn for a moment to Defendant's Exhibit E—Fox's Exhibit E, and ask you if your answer is the same, that upon examining the Fox Exhibit E, which refers to the period March 16th to—pardon me. Instead of Exhibit E, let us look at Exhibit F, referring to the period from April 3rd to May 31, 1950. It is also true, is it not, that there are no Warner bid letters there and that you did not license any pictures pursuant to a competitive bid, is that correct?

A. It is correct that there are no Warner bid

(Testimony of Bert Pirosh.)

letters. Now, I know how Warner's license—Warner today has a form which they send to the exhibitors for bidding and in which the exhibitor may just put his offer on their form and return them one copy. [987]

Now, it is possible that at that time they were doing that—maybe some time in this period, and it is possible I may have made some bids, but no bids on Warner pictures appear in these letters.

Q. All right. Now, during this period, however, can you state—and I believe this is what your testimony was yesterday, that you—well, I will withdraw the question.

Now, Mr. Pirosh, I think you testified yesterday—I will ask you to examine Plaintiff's Exhibit N and Plaintiff's Exhibit O.

The Clerk: Plaintiff Fox exhibit.

Q. (By Mr. Corinblit): Fox Exhibit N and Fox Exhibit O, that you played the picture—would you examine Exhibits N and O and tell me if it isn't correct that you played the picture Fort Worth at your Academy Theatre?

A. According to this record it played at the Fifth Avenue Theatre.

Q. At the Fifth Avenue Theatre?

A. That is what this shows, yes, sir.

Q. And did you play the picture Jim Thorpe, and where did you play it?

A. This indicates that it played in the Academy Theatre.

Q. At the Academy Theatre?

A. Yes.

(Testimony of Bert Pirosh.)

Q. Did you play the picture Captain Hornblower? A. Yes, at the Academy Theatre.

Q. And the picture On Moonlight Bay?

A. At the Academy Theatre.

Q. All right. Did you play the picture Sugarfoot? A. Sugarfoot?

Q. Yes.

A. It is not listed on either of these two exhibits.

Q. Did you play the picture Only The Valiant?

A. Only the Valiant?

Q. Yes.

A. That is not listed on either of these sheets.

Q. Did you play the picture Goodbye My Fancy?

A. Were these pictures released during this period, Mr. Corinblit?

Q. Yes.

A. According to this record I apparently didn't play it.

Q. You didn't play that, Goodbye My Fancy?

A. It doesn't show on this record.

Q. Did you play the picture A Lullaby of Broadway?

A. According to this record I didn't. Now, these records are for the, I think the 7-day availability. Some of these pictures I may have played in some of our theatres on a 14-day availability or a later availability. [989]

Q. Those pictures did not play on a 7-day availability according to your record?

A. I haven't been able to find them on these sheets, no, sir.

(Testimony of Bert Pirosh.)

Q. Now, with respect to Warner's when you did not bid but negotiated—you described something you called "competitive negotiations." How did that work?

A. Well, if my memory of the time is right, if an exhibitor wanted to play a Warner picture he would call Warner's and make them an offer.

Q. And Warner would decide if they thought the offer was reasonable and either accept it or reject it?

A. Warner's at some time would either accept or reject, presumably after they received the offer.

Q. After perhaps they made inquiry to see what other figures were obtainable or they decide that the exhibitor's offer looked reasonable to them and they would go ahead and license it, is that right?

A. I have no knowledge as to how Warner decided which theatre got the picture.

Q. But you have and bid during this period at some time or other negotiate with Warner's for pictures on the 7-day availability?

A. Well, apparently I did because we played some pictures. I have no records here to indicate that I made bids [990] or as I say I can't be positive.

Q. Now, sometimes, even though you might have made bids on some of the pictures, after the bidding was in for some reason or other you might negotiate for the picture if they rejected all bids, for example?

A. Are you talking about Warner's now?

(Testimony of Bert Pirosh.)

Q. Yes. A. During this period?

Q. Yes.

A. Well, I have nothing to lead me to believe that Warner was bidding at this period.

Q. Well, this practice of negotiating, first asking for bids and then rejecting all bids and then negotiating, that is a practice that was carried on from time to time by the distributors, isn't that correct, during this period in Inglewood?

A. Well, Warner at this period—I am not certain that they solicited offers from every exhibitor or whether they would select a theatre and say, "I would like to sell them this picture," or whether they solicited offers from all of the exhibitors or whether the exhibitors would have to call Warner's.

Apparently the Warner pictures at this period played in a number of different theatres on the 7-day availability in Inglewood and I presume it was some kind of competitive [991] negotiation.

Q. As a matter of fact, Warner's during the split period that you have described, that is during the period from September, 1949 to roughly April or May, 1950, as you have described it, when they were going to the La Tijera and the Imperial, that was sold by negotiation, too, isn't that right?

A. I was not buying many of their pictures so I don't know how they sold them.

Q. But you know that you weren't bidding for the pictures? You weren't submitting bids at that time?

A. On most of their pictures, that is correct, sir.

(Testimony of Bert Pirosh.)

Q. Now, this matter of negotiating for pictures. There is nothing particularly unusual about that, is there—that is, that was an accepted practice, negotiating for pictures and bidding for pictures. They were both accepted practices in the industry?

A. It depends on the situation.

The Music Hall Theatre, for example, in New York negotiates for the pictures it wants to play.

Q. But there are lots of theatres in Los Angeles that negotiate. Your theatres that negotiate for pictures that they want to play?

A. Some pictures, yes, sir.

Q. And as a matter of fact, the number of bidding [992] situations you have got is probably small compared to the total number of situations, isn't that right?

A. In the metropolitan Los Angeles area?

Q. Yes.

A. Well, I will have to talk by company.

Paramount offers all of its pictures for every run through—at least through—they offer an exclusive run on a picture and then they offer a 7 or 11-theatre group for second run and then they offer, I think it is 20 or 22 runs behind that all on a competitive bidding basis.

So, if I want to play a Paramount picture in any one of our theatres in the metropolitan Los Angeles area, including the San Fernando Valley, including Pasadena, including Inglewood and Redondo and Westchester and Santa Monica or East Los Angeles, I have to make a bid to play a Paramount picture.

(Testimony of Bert Pirosh.)

Twentieth Century-Fox follows roughly the same procedure. They are bidding throughout their first two or three—what they call swings—the groups of theatres 7-day availability and 21 and so on.

Q. Let me interrupt you for a moment. During the 1949-'50-'51 period you would certainly have roughly as many situations in the Los Angeles area that you were negotiating as compared to the situations in which you were bidding, isn't that right?

A. (No answer.) [993]

Q. If you don't remember, say so.

A. I am trying to think. This is '50 and '51?

Q. Yes.

A. Well, in the towns surrounding Los Angeles at that time we were bidding in the Inglewood-Westchester area. We were bidding in Huntington Park, in Pasadena. I believe in Glendale. I am not positive about Santa Monica. I think that was bidding. It was at some time in there.

We were bidding in the San Fernando Valley. We were bidding in quite a number of the local areas or zones in the city of Los Angeles.

About the only theatres we weren't bidding in at that time as I recall it now, were the little insignificant last run theatres. As a matter of fact, we were bidding in our little Inglewood theater against another for the privilege of coming in after six or seven other theatres. [994]

Q. All right. Now, certainly in your experience as a buyer and booker for Fox, you had many situa-

(Testimony of Bert Pirosh.)

tions in the past in which you were negotiating for pictures, no question about that.

A. Yes, sir, that is true.

Q. That is true? A. Yes, sir.

Q. All right. Now, Mr. Pirosh, I want to call your attention again to the 1950-51 period and I want to ask you this question with respect to Warner's product. Do you remember that among the group of theatres in the area, the Inglewood-Westchester area, that practically every picture that was released by Warner's that was played on a 7-day availability, one theatre was the Southside, do you remember that?

A. I think that they licensed quite a few pictures to the Southside.

Q. The Southside at that time was negotiating for a 7-day availability, do you know that?

A. I don't know how he was getting his pictures.

Q. Now, one way to know whether or not Warner Bros. was negotiating with the Southside is to look at the bid files and to see if there are any bids in there, isn't that right? If there are no bids in there and he gets a picture on the 7-day availability, he is getting it by negotiation, [995] right?

A. I would think that is a reasonable assumption, yes, sir.

Q. I want to show you, Mr. Pirosh, one of the bid files that your attorneys have marked in this case as Joint Plaintiff's and Defendants' Exhibit, and show you a letter dated July 23, 1951.

(Testimony of Bert Pires.)

Before I do that, let me check again the pictures of this group that you did or did not play.

Did you play the pictures Fort Worth or Jim Thorpe?

A. Jim Thorpe I played, and Fort Worth I played. Fort Worth was in the Fifth Avenue.

Q. You played Fort Worth in the Fifth Avenue?

A. Yes, sir.

Q. All right. I will show you the files that have been marked Joint Plaintiff's and Defendants' Exhibit, one of which refers to the picture Jim Thorpe, and show you that Warner's by this file sent out a bid letter, sent out a bid letter to Fox, which you returned. A. Yes.

Q. Sent out a bid letter to the Century Drive-In, sent out a bid letter to the Imperial, which was returned, sent out a bid letter to the La Tijera.

A. Yes.

Q. On their sheet in terms of showing response, they [996] show that the Fifth Avenue did not put in an offer.

Mr. Mitchell: Isn't that on a 14-day availability? It is not a 7.

Mr. Corinblit: You are absolutely correct. You are absolutely correct.

All right. Let's refer to the 14 day availability. Now, on that 14 day availability—

Mr. Mitchell: What is the materiality of the 14 day availability? Have we got to try out the availability of the 14 days and the 21 days? Object to it on the ground it is immaterial.

(Testimony of Bert Pirosh.)

Mr. Corinblit: Your Honor, we have the testimony here, Mr. Pirosh testified in answer to your question yesterday, that there was no deal to lay off the bidding with the distributors. This testimony is designed to go to that point.

Mr. Mitchell: Let's go, then, if there is any question about that.

The Court: Objection overruled.

Q. (By Mr. Corinblit): Now, with respect to the picture Jim Thorpe, 14 day availability for the Fifth Avenue, no bid was submitted by Fox?

A. No. I submitted a bid for the Fox Theatre.

Q. You submitted no bid for the Fifth Avenue?

A. The theatres are competitive. I wanted to play the [997] picture in the Fox Theatre.

Q. Which theatre played the picture?

A. Apparently from this it looks as if the Fox Theatre got the picture on the 14 day availability.

The Academy played Jim Thorpe on 7 day.

Q. Which theatre played the picture on the 14 day availability?

A. According to this, the Fox Theatre and the Centinela Drive-In.

Q. I am talking about your list. Don't you have it?

A. I don't have a list of 14 day availability. On the 7 day availability, the picture played at the Academy Theatre. Where else it played, I don't know.

The Court: May I ask this witness a question?

Mr. Corinblit: Yes, sir.

(Testimony of Bert Pirosh.)

The Court: When Fox made a bid on a picture in the Inglewood area, after you got the picture, did you have a right to allocate the picture to any theatre you wanted to, or did you have to bid for each individual theatre?

The Witness: We would have to make our offer for the specific theatre in which we wanted to play the picture. We never wrote a bid letter and said, "We will play the picture in the Academy or the Fox Theatre."

We make an offer for the Academy Theatre or for the Fox Theatre or for the Fifth Avenue, or perhaps we might make [998] two offers, because we never knew how the distributor would evaluate a bid, and if we were unbooked in two theatres, we might make a bid at the Fifth Avenue Theatre for 14 days, because it is a lower expense house, and 7 or 10 day bid in the Academy Theatre.

If the distributor said, "You are awarded the picture in the Fifth Avenue Theatre," I would have to look for another picture for the Academy Theatre.

The Court: Do you remember any instance where you got a picture for the Academy, and after you got the picture on the bid, you were allowed to put the picture in another Fox Theatre in that locality?

The Witness: I don't recall any such instance, your Honor.

The Court: So the bid was for a particular theatre, and the picture played in that particular theatre?

The Witness: If I got the bid.

(Testimony of Bert Pirosh.)

The Court: If you got the bid?

The Witness: Yes, sir.

Mr. Corinblit: Now, do I understand, counsel, you do not have the 7 day availability bid letters, is that correct, in the latter part of 1951?

Mr. Mitchell: Of Warner Bros.?

Mr. Corinblit: Yes.

Mr. Mitchell: My understanding is for a period of [999] time Warner Bros. sent out bid letters on forms, and the reason Mr. Pirosh says he doesn't have them in his file is the forms, in order to make a bid, had to go back to Warner Bros., so there are no bid requests in his files because they go back to Warner Bros. They had formal competitive bidding, according to my understanding, with Warner Bros. from September, 1950 to May, 1951, and the Warner Bros. documents so show, and we have them here.

Mr. Corinblit: Under your examination, Mr. Mitchell, Mr. Pirosh testified to the effect that his recollection was that there was no formal competitive bidding during this period.

Mr. Mitchell: Mr. Pirosh is not my client and I can't help what he says. If you call a Warner Bros. witness, I will straighten it out. All I can do is take Mr. Pirosh's recollection, and we are about to refresh his recollection with these bid letters and get it straightened out.

Mr. Corinblit: All right.

Mr. Johnston: I think the duty devolves on me to make a statement here, your Honor. I asked

(Testimony of Bert Pirosh.)

Mr. Pirosh about Warner Bros. Warner Bros. counsel have handed me in the past 15 minutes a sheaf of documents which are Warner Bros. forms which I have not heretofore seen other than the last 10 minutes or so. These are forms put out by Warner Bros., and as I look at them, they are sent into Warner Bros., and apparently [1000] we don't have a duplicate of these forms that were sent in to Warner Bros.

When I examine Mr. Pirosh, if I have the opportunity to do so again, I intend to go over these letters with him and refresh his memory as to the situation, if I have the privilege.

The Court: Maybe if you give the forms to Mr. Corinblit, he will use them.

Mr. Johnston: I will be glad to do so if he wishes to.

The Court: Maybe he will refresh the witness' recollection.

Mr. Johnston: He may be more familiar with them than I am.

Mr. Corinblit: Your Honor, this might be a good time to take the afternoon recess so I can go over them.

Mr. Johnston: I would like to look at them, too.

Mr. Corinblit: Certainly.

The Court: All right. We can take the afternoon recess.

Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with

(Testimony of Bert Pirosh.)

anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until the case is finally submitted to you. [1001]

With that admonition we will now recess until five minutes after 3:00.

(Recess.) [1002]

The Court: Is it stipulated the jury are present and in the jury box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Mitchell: Yes.

The Court: You may proceed.

Q. (By Mr. Corinblit): Mr. Pirosh, I want to show you some bid forms which have been produced by your attorneys, which have been previously marked as joint plaintiff's and defendant's exhibits in this case.

Mr. Mitchell: They were produced by Warner Bros. and not by Mr. Pirosh's attorney.

Mr. Johnston: I would like to make it clear again, Mr. Corinblit, that I saw those documents for the first time about 15 minutes before the recess.

The Court: Let the record show they were produced, period.

Mr. Johnston: Not by me.

Mr. Mitchell: If there is some question about withholding I want it understood I have been trying to tell this gentleman, Mr. Pirosh, that there was bidding in this period and he keeps telling me, "I don't remember."

I have never seen these documents, but I had

(Testimony of Bert Pirosh.)

some documents I was going to show to the Warner people and straighten the thing out, but I can't do it when a man won't remember for me. [1003]

Q. (By Mr. Corinblit): Now, Mr. Pirosh, I will show you first a bid file dated—which refers to the picture *Three Secrets* and as a part thereof a document which purports to be a bid application returned by you on behalf of the Academy Theatre.

Now, does that refresh your recollection as to whether or not in September of 1950 you obtained pictures by competitive bidding or by negotiation?

(Handing document to the witness.)

The Witness: This is not signed by me. It is signed by Everett Sharp, but apparently in September——

The Court: The question is does it refresh your recollection.

The Witness: Yes, it does and apparently in 1950 Warner's were offering at least this picture on a competitive bid basis in the Westchester-Inglewood area.

Q. (By Mr. Corinblit): Does it refresh your recollection as to whether or not they were generally licensing their pictures, at least one of their runs, on a competitive bidding basis in September 1950?

A. Yes. My recollection has now been refreshed and I now believe that Warner Bros. were offering their pictures in this area on a competitive bidding basis from approximately September of 1950 for some months thereafter, at least.

Q. And in that connection you want to change

(Testimony of Bert Pirosh.)

your testimony [1004] given yesterday on that point?

A. I was mistaken, yes. I want to change my testimony.

Q. Now, do you know how long it was until Warner Bros., instead of selling pictures on a competitive bidding—withdraw that.

Do you know how long it was—what period Warner's continued to send out competitive bidding forms to the exhibitors in that area?

A. Is it all right for me to answer that as to what someone has told me or does it have to be something I remember?

Q. I think I know what you have reference to and I will refresh your recollection. Based on those two documents——

Mr. Westbrook: Warner's G-5 and G-6. [1005]

Mr. Mitchell: The documentary evidence will show when it started and when it ended.

Mr. Corinblit: Well, now, we will ask the witness.

Q. I show you a letter dated September 5, 1950, from Mr. Kupper to Mr. Herbel, and ask you to read that and tell me if that refreshes your recollection as to the time when competitive bidding began in the Inglewood-Westchester area.

Mr. Johnston: As to Warner Bros. product.

Mr. Corinblit: As to Warner Bros. product.

The Witness: Apparently some time between September 5 of 1950, when this request was made, and October—well, whatever date this was sent out, which is September 22 of 1950.

(Testimony of Bert Pirosh.)

Q. (By Mr. Corinblit): Mr. Pirosh, does it refresh your recollection that that was true?

A. Well, I can see that it is true.

Q. That is, that the bid letters started coming out at that time? A. Yes, sir.

Q. All right. Now, I will show you another document—have you seen this letter marked G-5 by the defendants before? A. No, sir.

Q. I will show you Defendants' Exhibit G-6 for identification—— [1006]

Mr. Mitchell: Defendant Warners.

Q. (By Mr. Corinblit): Defendant Warners' Exhibit G-6 and ask you whether or not you can state when Warners ceased licensing their pictures on a so-called formal competitive bidding basis.

A. According to this letter, Warners ceased on May 17, 1951.

Q. Does that refresh your recollection that that was about the time when that happened?

A. Well, I can see that this is when it happened.

Q. Now, after May 17, 1951, you went into this procedure of negotiating with Warners for a 7 day availability for your theatres, is that right?

A. Well, my memory was faulty on this whole Warner Bros. during this period, and I believe that that is what we did, but I cannot be absolutely sure.

Q. Can you describe for the jury what happens when Warners licenses you on a 7 day availability by negotiation as distinguished from by competitive bidding?

A. Well, by competitive bidding, Warners would

(Testimony of Bert Pirosh.)

send a written request to all of the *exhibits* having theatres that wanted to bid for the 7 day availability in Inglewood.

I, for my company, would decide what terms I wanted to offer for a picture in a specific theatre and mail it to Warners, and some time subsequent to that Warners would advise [1007] me either that I could license the picture or that they are licensing it to a competitor.

Q. All right.

A. On negotiation, on normal negotiation, I would, or someone working for my company, would talk to a representative of Warner Bros. Theatres—

Mr. Mitchell: Not Warner Bros. Theatres.

The Witness: Warner Bros. Pictures, and, roughly, the conversation would be, "I would like to play this picture in the Academy Theatre and I am willing to pay you such-and-such terms," and Warners, if they say yes, they will make a deal, and if they say no, "I don't want those terms, I want this," and if you agree, you license the picture, and if you don't agree, you don't license it.

Q. Now, going back first to the period when Warners was sending out these letters, you will notice that the letters that you received refer to—let's take one of the letters going to the Academy, the picture Dodge City and Virginia City, it shows that the competitive bidding application coming to you says: "Theatre Academy," it names the pictures, and says, "Clear, clearance, the maximum

(Testimony of Bert Pirosh.)

clearance to be granted for this run shall be clear of United Artists Inglewood, La Tijera, Imperial, Southside and Paradise.”

From that, do you conclude what theatres were supposed to be bidding for the 7 day availability against your [1008] theatre?

A. No. I would conclude that if I licensed these pictures at the Academy Theatre, if it was acceptable to Warner Bros., I would receive a run prior to that of these other theatres, whether they were bidding or not bidding.

Q. All right. You did receive a run prior to the United Artists, the La Tijera, and the Imperial, the Southside and the Paradise, is that correct?

A. If I made an offer that Warners would accept, based on this priority of run that they have listed.

Q. All right. Now, I want you to run through the remaining bid groups here in front of you and tell me whether or not your answer is the same with respect to each of the pictures, the following:

The Enforcer, Storm Warning, Raton Pass, Dallas, West Point Story, Highway 301, Breakthrough, Operation Pacific, Lullaby of Broadway, The Glass Menagerie, The Breaking Point, and Rocky Mountain.

That is to say, if you licensed pursuant to that bid letter, you would expect to obtain a run prior to all the theatres that you have enumerated, namely, United Artists, La Tijera, Imperial, Southside, and Paradise?

(Testimony of Bert Pirosh.)

A. Well, on the picture *The Enforcer*, on which I made an offer, if I received the picture on the terms I offered, and in accordance with this letter, I would have received a [1009] run prior to those theatres.

Q. All right.

A. On the picture *Storm Warning*, I made no offer at that time.

On the picture *Raton Pass*, on which I made an offer on behalf of the Fox Theatre, I would not have received clearance or I would not have received a run prior to the Southside Theatre necessarily, because that is taken off the sheet, but the Century Drive-In and the Centinela Drive-In are included, so I would have received a prior run to that, if I received the picture on that offer.

Q. You say the Southside is scratched out?

A. Yes, sir.

Q. Who scratched that out?

A. I don't know.

Q. Well, now——

A. I may have scratched it out. I just can't remember.

Q. All right. Go ahead with the next one.

A. I notice that this was rejected.

Q. Go ahead.

A. On the picture *Dallas*, I made an offer on behalf of the Academy Theatre, and if I had received it, I would have received a run prior to the United Artists, La Tijera, the Imperial, the Southside, the Paradise, but my offer was rejected on that. [1010]

(Testimony of Bert Pirosh.)

Q. All right.

A. So I guess I did not get it.

On The West Point Story, I would have received, if I got the picture, I would receive clearance over United Artists, the La Tijera, the Imperial, and the Paradise. The Southside is scratched off and it looks as if I scratched it off. [1011]

Q. All right. The next picture, On Highway 301.

A. I would receive clearance over the United Artists, La Tijera, Imperial, Southside and Paradise, if I received the picture or should have.

On Breakthrough on which I apparently made an offer at the Academy Theatre, I would receive a run prior to the United Artists, the La Tijera, the Imperial, the Southside and the Paradise, or should have.

On Operation Pacific on which I made an offer in the Academy Theatre, I would have received a run prior to the same group of theatres.

On Lullaby of Broadway, on which I made an offer on behalf of the Academy Theatre, I would have received a run prior to that of the theatres, the same bunch of theatres we have been talking about, plus the Balboa Theatre, plus the Centinella Drive-In, and the Century Drive-In, but that was rejected.

On the picture Glass Menagerie—I didn't make this offer. Another man in our office made the offer on behalf of the Academy Theatre and if we would have received the picture we would have received a run prior to that same group of theatres, namely,

(Testimony of Bert Pirosh.)

the United Artists in Inglewood, La Tijera, Imperial, Southside and the Paradise.

On the picture *Breaking Point* we made an offer on behalf of the Fox Theatre and if we had received it we would have had [1012] a run prior to the United Artists, La Tijera, Imperial, Southside and Paradise.

On Rocky Mountain we made an offer on behalf of the Academy Theatre and had we received it, it would have been a run prior, according to this form, to the same five theatres.

Q. Including the Southside?

A. Including the Southside, yes.

Q. Go ahead.

A. The picture *Sugarfoot*—I can't find the sheet for any of our theatres.

Q. All right.

Now, I want to make some comparisons here.

The picture *The Breaking Point* which played the Academy Theatre October 4 to 11, is that right?

Mr. Westbrook: Counsel, it played the Fox Theatre, I believe.

Mr. Corinblit: Fox Theatre is right.

Mr. Mitchell: Hadn't we better let the witness work from his own records rather than work from Warner Bros.' records? It is most unusual. He is refreshing his recollection from Warner's records. It is all new to me but does he have to use Warner's records?

Mr. Johnston: You have the exhibits N and O which are Fox records and these are not.

(Testimony of Bert Pirosh.)

Mr. Corinblit: All right. Here you are. [1013]

The Witness: Thank you.

Q. (By Mr. Corinblit): Let us look first at the picture—instead of *The Breaking Point*, let us start with the picture No. 007, *The Glass Menagerie*.

Now, what was the date of the playoff at the Academy? A. November 15 to 21, 1950.

Q. It opened November 15 to November 20th?

A. 21, I think.

Q. 11-21. All right.

Now, then, the next picture *Rocky Mountain*. When did it play at the Academy?

A. November 1 to 6.

Q. 11-1 to 11-6. All right. And the next picture *West Point Story*?

A. That played for 11 days, December 20th to December 30th.

Q. 20th to 30th? A. Yes, these are 1950.

Q. Yes. The next picture *Breakthrough*?

A. *Breaking Point*, you mean?

Q. No, *Breakthrough*, Release No. 010.

A. Oh, I see it here. It opened on November 29 through December 5.

Q. What is that again?

A. November 29 through December 5th. [1014]

Q. All right. Now, let us go to the release Highway 301. When did that play Academy Theatre?

A. December 31, 1950, to January 6 of 1951.

Q. Now, Mr. Pirosh, I want to read to you and I will offer in evidence the cut-off cards of the Southside Theatre for the same season. I will first

(Testimony of Bert Pirosh.)

read these off and I will be glad to offer the document in evidence if counsel desire.

The Southside played the picture Glass Menagerie November 15th to 21st.

The picture Rocky Mountain was played November 1 to 7.

The picture West Point Story was played December 20th to December 30th.

The picture Breakthrough was played November 29 to December 5th.

And the picture Highway 301 was played December 31 to January 6.

Now, if we can get this clear, the Academy is located here and the Southside here.

How far are the Academy and Southside approximately apart? Do we have those distances — the Academy and Southside?

Mr. Westbrook: We have yet to find mileages on which we can agree.

Mr. Corinblit: That is true.

Mr. Westbrook: I believe the Southside is approximately 3.6 miles from the Academy. [1015]

Q. (By Mr. Corinblit): 3.6. All right. Now, you notice, Mr. Pirosh, that the picture Glass Menagerie played day and date with the Southside?

A. Yes.

Q. The picture Rocky Mountain played day and date with the Southside? A. Yes, sir.

Q. The picture West Point Story played day and date with the Southside Theatre?

A. Yes, sir.

(Testimony of Bert Pirosh.)

Q. And the picture Breakthrough played day and date with the Southside Theatre?

A. Yes, sir.

Q. And the picture Highway 301 played day and date with the Southside? A. Yes, sir.

Q. Now, would you look again at the bid forms for those pictures? A. Rocky Mountain.

Q. All right. Now, under the contract—under the bid application that was accepted by Warner's— A. That is no contract.

Q. This bid application. I will put it that way. The bid application submitted by you contained the provision that you were to have a priority of run over all of the theatres [1016] including the Southside, is that right?

A. That is what I asked for, yes.

Q. But in fact what was licensed was day and date with the Southside, correct?

A. Apparently that is correct, sir.

Q. Now, let us look at the next picture Glass Menagerie. We will start with Glass Menagerie, if you have got it. [1017]

A. Here it is.

Q. Glass Menagerie under the application that you submitted, you would have had a priority of run over all of those theatres including the Southside, is that correct?

A. That is what we asked for.

Q. What was licensed was a day and date application with the Southside?

A. We didn't get what we asked for.

(Testimony of Bert Pirosh.)

Q. Well, now, as a matter of fact, Mr. Pirosh, when this form came to you it had written in it by Warners "These clearance provisions," isn't that right? A. That is right.

Q. In other words, Warners sent you an application and said the clearance that we will give you is clearance over the United Artists, Inglewood, the La Tijera, the Imperial and the Southside. That is what Warners said?

A. That is what they said on the form?

Q. Yes. A. Yes, sir.

Q. And then you sent back an application which said the same thing—that is, you signed the application? A. That is what we wanted.

Q. They offered it to you and that is what you wanted?

A. They said they offered it to us, yes.

Q. Now, what happened in between that time and the [1018] fact that you played day and date?

A. Well, what happened was that if we insisted on the clearance over the Southside we wouldn't get the picture.

Q. But Warners offered it to you?

A. Offered it to us there but they didn't offer it to us in fact.

Q. You remember that?

A. Well, I know that. I remember this—I can't remember every licensing of every picture in this area at that time, naturally, but I do know that for some period of time I was arguing or quarreling with a number of the distributors concerning the

(Testimony of Bert Pirosh.)

way they were licensing pictures in the Inglewood and Westchester area.

It was my feeling that our theaters were being seriously affected by the manner in which some of the distributors wanted to license their pictures, and in order to try to protect our investment and potential profit I tried to get the best run that I could for our theatres.

Now, I do recall that Warner Bros.—I recall no specific picture, but an over-all argument that we should have—that the Academy Theatre was substantially in—was in substantial competition to the Southside Theatre and we were unsuccessful despite what was written on these forms in getting Warner Bros. to license these pictures at least during this period on a run prior to the Southside Theatre.

We then had the option of playing the pictures on the day and date run or not playing the pictures. Where we thought we were better off playing these pictures day and date with the Southside instead of playing possibly an inferior picture, as the record shows, we undoubtedly agreed to play day and date.

Q. With the Southside. All right.

A. With the Southside on these pictures.

Q. And it has been stated the Southside Theatre is approximately three and a half miles away from the Academy.

Mr. Westbrook: 3.6 miles, counsel.

Mr. Corinblit: 3.6 miles. All right.

Q. Now, Mr. Pirosh, it has also been—I don't know if it has been stipulated to yet, but it has been

(Testimony of Bert Pirosh.)

stated that the distance between the Academy and the Paradise is four and a half miles.

Now, you didn't want to play day and date with the Paradise, did you?

A. I didn't want to play day and date with the Paradise or the Southside.

Q. But Warner Bros. said you—you were able, however, to convince Warners that you would play day and date with the Southside—I beg your pardon—that you would play day and date with the Southside but not with the Paradise?

A. No. Now, you are putting words in my mouth. I wasn't [1020] able to convince Warners of going along and saying that the Academy is competitive to all of these theatres.

I had no more objection to playing day and date with the Paradise Theatre than I had to playing day and date with the Southside Theatre, but Warner Bros. told me they liked the Academy Theatre, it was a good, high grossing theatre in this area and they told me that the Southside Theatre had done better on the pictures of theirs that played there than the Paradise.

Some of these pictures may have played in the Paradise, too, I don't know. And if you are implying that I, representing Fox West Coast was playing footsie with Mr. Marco Wolff as opposed to any other exhibitor in the area, I want to assure you you are mistaken. I had no conversation with Mr. Wolff regarding what Warners were doing and I kept explaining to Warners that they were hurting my the-

(Testimony of Bert Pirosh.)

atres and Warners laid it down to a take it or leave it proposition and when we thought we were better off, fine, we took it. [1021]

Q. I don't mean to imply anything, Mr. Pirosh. I am trying to get the facts here and see if you would answer this question. The fact is, is it not, that you were much more insistent on getting clearance over the Paradise, four and a half miles away, than you were on getting clearance over the Southside, three and a half miles away, because clearance over the Paradise would protect the Loyola, as well as protect the Academy, isn't that correct?

A. How would clearance in the Academy Theatre over the Paradise possibly help the Loyola Theatre?

Q. When your pictures played first run in the Academy Theatre, if a theatre located three blocks away had a regular flow of 7 days pictures in that area competing for the customers in the Westchester area with good strong pictures from the other distributors, wouldn't that have affected your Loyola Theatre?

Mr. Mitchell: I object to the question on the ground it assumes facts not in evidence. There were no pictures playing first run in the Academy Theatre.

Mr. Corinblit: Did I misspeak myself?

Mr. Mitchell: I don't know. The question is so long I can't remember.

Q. (By Mr. Corinblit): With respect to the Loyola Theatre——

A. Yes, sir. [1022]

(Testimony of Bert Pirosh.)

Q. If the Loyola Theatre were playing first run and the Paradise were playing a steady flow of pictures on a 7 day availability of the other distributors, wouldn't that affect the ability of your Loyola Theatre to compete with the Paradise for patronage in the Westchester area?

A. I wouldn't think so, so long as the Loyola and Paradise were not playing the same picture. If people in that area wanted to see a picture that was playing in the Loyola, I think they would have gone to the Loyola. It has been my experience, Mr. Corinblit, that when in an area like this or any limited area, there are three or four good pictures playing currently in theatres close to one another, people coming down to that area who want to see one, if they can't get in that theatre, they will go to another. If there is only one good picture and three or four poor ones, they probably feel, "If I can't get in this theatre, then I won't go to any of them. I have just wasted my time on this trip, because I am not going in any of the others."

It doesn't hurt us, I don't think, at the Chinese Theatre that Cinerama is doing a lot of business on the street. I think it helps us. It brings people into the general area.

So until you mentioned this, I had never thought of the Loyola in connection with this Academy and Paradise clearance. It never had crossed my mind.

Q. You never thought it was to Fox' interest to keep [1023] the Paradise in as poor competitive a position as possible?

(Testimony of Bert Pirosh.)

A. It is to Fox' interest in the Academy Theatre to secure the best run we can get for the theatre, and if we can get clearance or a run prior to theatres which I still feel are in substantial competition, even though they may frequently play day and date, that was my job to do for my company.

Q. It was also your job that you were to do for your company to keep the Paradise in as poor competitive position as possible, isn't that right?

A. I don't care if the Paradise Theatre makes a million dollars, as long as we get what we think we should be doing in the Academy.

As a matter of fact, since you ask that question, I am very happy when our competitors are prosperous and happy, because the more money the competitors are making, the less trouble there is in operating their own theatres. If a man is healthy and happy with his product he doesn't come yammering around or complaining about what we are doing. He runs his business and we run ours. That is the way we like it.

Q. I want to ask you, Mr. Pirosh, when you testified before with respect to one of these pictures, you scratched out the Southside. Do you remember, was that pursuant to some discussion with Warners, or don't you remember that?

A. I think that was a picture for which we made an [1024] offer in the Fox Theatre. We did not take the stand that the Fox Theatre was in substantial competition to the Paradise—to the Southside Theatre, because it was further away than the Acad-

(Testimony of Bert Pirosh.)

emy, and in our opinion played to a completely different audience.

The Academy Theatre, not being in downtown Inglewood, must of necessity from the day it was built have drawn from a pretty wide area. There was no tremendous built-up area right at the Academy. There is Leimert Park on one side, and the homes to the south and the west, and it is just in the past three years that there has been any considerable building to the west of the Academy Theatre, toward the Westchester area, and so on. That is comparatively new, and I think mostly since the war.

Q. This position you took with respect to Warners of clearance of the Academy over the Paradise is a position that you took with each of the distributors, is that correct?

A. I asked for a prior run, and some companies agreed that the Academy was entitled to a prior run and some companies like Columbia and subsequently Warners said, "We are going to sell the Paradise, and if you don't want to play the pictures at the Academy Theatre, don't play them," and sometimes we didn't.

Q. I think Mr. Mitchell asked you yesterday about this question of clearance. I think you testified with respect to [1025] the clearance and the matter of priority of run.

When bidding was set up and you bid, for example, on these Warner pictures, the offer that was given to you by Warners, the competitive bidding

(Testimony of Bert Pirosh.)

application, your understanding was if you obtained the picture under this competitive bidding application, you would have obtained the right to have priority of run over the theatres named in that group, is that correct?

A. I think before I was awarded these pictures you are talking about on the board, I was told by Warners that, "If your bid is the best—your bid is the best and we are willing to sell you, but if you insist on a run ahead of the Southside, you are not going to get it."

Q. But the offer made to you, apart from the Southside, when you bought the run, you bought the run with the right to have priority of run ahead of the other theatres, isn't that correct?

A. Warners were licensing two runs in the area, as I understood it, at the time generally.

Q. Yes.

A. If they told me the Southside was going to be the other theatre, I knew these other theatres wouldn't be playing on the same availability. I didn't get clearance, but I did get a run prior.

Q. You got the right to have the prior run?

A. If I played the availability. If I were late, I would have no priority, because these other theatres were being licensed to run on the 14 day availability.

Q. Now, Mr. Pirosh, one other thing, and perhaps I asked you this before. I notice in the bid groups—withdraw that for the moment.

Looking at the names of these theatres listed in

(Testimony of Bert Pirosh.)

the bid groups, under the form that Warners sent you, the way in which they were handling the matter, you expected that all these theatres were bidding, did you not?

A. I did not know if any of the theatres were bidding on any specific picture.

Q. But these were the theatres against whom you were supposed to be bidding?

A. Not necessarily.

Q. Not necessarily?

A. These were the theatres, if Warners did what they said they were going to do, if I got the picture, I would play ahead of them. Maybe none of them were bidding.

Q. So despite these bid letters, there was nothing to prevent Warners from negotiating with one of these theatres for a 7 day availability, was there?

A. Well, I don't think Warners could have negotiated with any of the theatres for the 7 day availability until they decided which theatre had the best bid. [1027]

I think what Warners was doing, and there is a little bit of guesswork in this, was licensing one run on a competitive bid during this period.

Q. Right.

A. And negotiating evidently on a number of pictures with Mr. Marco Wolff in the Southside Theatre.

Q. They were licensing one run on a competitive bid and negotiating the second run day and date, right?

(Testimony of Bert Pirosh.)

A. That is my best guess on it now. Each distributor, as you heard, during these two years or several years in this area was experimenting. A lot of new theatres, good theatres, and a couple of drive-ins, were built, which completely upset their estimates of how they should license the pictures in Inglewood. I think they were groping, and we, of course, in respect to our theatres, were trying to make as much money in them as we could. We didn't do it.

Q. Do you know, Mr. Pirosh, that during this entire period Warners refused to negotiate for a 7 day availability with the Paradise Theatre?

A. I had no knowledge as to that.

Q. You had no knowledge of that fact?

A. You asked me if I knew, and I certainly don't remember anything of that sort.

Q. You know, do you not, that during this period all of the distributors, that is, the defendant distributors in this [1028] case, refused to negotiate with the Paradise Theatre for a 7 day availability?

A. They weren't negotiating with me, either, I was bidding my brains out to try to get pictures.

Q. You know, however, they did not negotiate with the Paradise? Do you know that?

A. I don't know. I think the Paradise played a couple of Warner pictures shortly after he opened. I don't know how he got them. He played some pictures. I don't know how he got his pictures, but the theatre was open seven days a week all year long, and if he had to bid the way I did, I don't see any-

(Testimony of Bert Pirosh.)

thing wrong with that. If he negotiated, then he was smarter than I was.

Q. Do you know that when the Paradise asked each of the distributors for the privilege of negotiating for a 7 day availability, that he told the distributors he didn't want any clearance over anybody on a 7 day availability except the Loyola and, of course, they were playing first run?

A. And the La Tijera Theatre.

Q. On the 7 day availability. Well, for a period, that is correct.

A. Sure. Look, Mr. Corinblit, that is fine. I would like to be able to build a theatre on Hollywood Boulevard and be able to play day and date with the Chinese Theatre, or I would like to be able to build a theatre—according to that [1029] line of reasoning, if the Paradise was not competitive to anybody in the world, then a good picture would play in the Inglewood area in the Paradise and the La Tijera and the United Artists and the Academy and the Southside and the Rio and the Imperial, and all the other pictures that are released then we wouldn't play in any theatre in Inglewood. Everybody would want the good picture.

Maybe that is the way to operate the motion picture business, but I don't know where the distributors would get the prints to serve all these theatres that want to play the same picture the same day in every area. That could be true all over the city.

Q. Mr. Pirosh, I think Mr. Mitchell asked you as to whether or not there was any conspiracy be-

(Testimony of Bert Pirosh.)

tween you and any of the defendants in this case during the period of time covered.

I will talk first about the period 1950-1951 with respect to the first run matter.

A. Would you tell me again who the defendants are in this case? [1030]

Q. Yes, the defendants are Loew's Incorporated, Warner Bros. Pictures, Warner Bros. Distributors, Universal Film Exchanges, Paramount Pictures Inc., Twentieth Century-Fox, National Theatres Corporation and Fox and Fox West Coast.

Now, Mr. Pirosh, having in mind Fox West Coast and also having in mind the United Artists Theatres Circuit, Inc., talking about first run Los Angeles, it is a fact, is it not, that you had discussions with Mr. Hickey in which you told him that all of the exhibitors, that is first run exhibitors, had divided the product of all of the film companies on first run in Los Angeles?

Mr. Mitchell: Now, your Honor, the period with respect I asked the witness the question was September 17, 1950 to September 17, 1951, and proper recross examination should be limited to that period and not to the earlier part of 1950 or any other time. Otherwise we will just roam all over the period of time.

The only period material to this action in respect to the conspiracy or for that matter I think anything else, is September 17, 1950 to September 17, 1951. That is all I asked him about.

Mr. Corinblit: Your Honor, I will be glad to put

(Testimony of Bert Pirosh.)

the question during that period for the purpose of this question.

Q. Mr. Pirosh, it is a fact, is it not, that you talked [1031] to Mr. Hickey and described to him an arrangement between Fox and the other exhibitors, first run exhibitors in Los Angeles, whereby the first run pictures were allocated in the Los Angeles area in September 1950 and '51?

A. This is with reference to downtown Los Angeles?

Q. Yes.

A. Well, during that period we were playing the product of Twentieth Century-Fox in our Los Angeles Theatre.

I had not played any pictures released by Mr. Hickey's company, Loew's Incorporated, for a long time. And as a matter of fact, when Mr. Hickey was bidding downtown somewhere in this period, he didn't even send me any bid letters because he knew we couldn't play the pictures and I had no discussions whatsoever with Mr. Hickey with reference to downtown Los Angeles pictures, in downtown Los Angeles at that time as far as the pictures were concerned.

Q. Mr. Pirosh, in this case the record shows that Mr. Hickey testified that the exhibitors, downtown exhibitors got together and allocated product on first run and that you went in—that you were one of the people, yourself, Mr. Stein, Mr. Rosenberg went in and told him you were doing it. Is that testimony correct?

(Testimony of Bert Pirosh.)

A. No, sir. I repeat that at this time we were playing in our theatre downtown the product released by Twentieth Century-Fox. I received no bid letters from Metro. [1032] I had no discussions with Mr. Hickey or with Mr. Rosenberg or with Mr. Stein or Mr. Miller about the situation in downtown Los Angeles at that time, because I had no cause to. I had the Fox pictures in our theatres, and we couldn't use any other pictures if we wanted to. If Mr. Hickey testified I talked to him about that I am afraid he made a mistake.

Mr. Corinblit: No further questions.

Mr. Johnston: I have a very few questions, your Honor.

Recross Examination

Q. (By Mr. Johnston): Mr. Pirosh, I want to ask you a question or two about the matter of convenience to the public which Mr. Corinblit inquired of you.

Now, take the picture currently playing at the Chinese Theatre. What is the admission price for that picture? What is the admission price of the picture you are playing at the Chinese Theatre at this time?

A. Night time general admission for adults is \$2.00. That includes all taxes.

Q. When that picture gets out on subsequent run, which you described as being some months from now, the admission price charged in your theatres and probably other theatres will be considerably less than that, will it not?

(Testimony of Bert Pirosh.)

A. In some of the theatres it will be 25 per cent of [1033] that.

Q. And I think you said this morning it would get down to fifty cents in the Baldwin Theatre, if it plays that house, or fifty cents in some other theatre playing some months from now.

Now, do you not consider, Mr. Pirosh, the segment of the population which does not wish to pay \$2.00 or cannot pay \$2.00 and that it is a convenience to those people to be able to see the picture at a price which will save fifty cents some weeks or months from now?

A. Well, I don't see that it is any different. When a picture plays in the Music Hall in New York, if anybody in New York or Brooklyn or the Bronx or Jersey City or Newark, New Jersey or as a matter of fact, I think from a radius of many miles, they go to the Music Hall or wait until it comes to a closer theatre.

That has been common practice in distribution and exhibition of motion pictures in practically every big city in the United States.

Q. What I am trying to say is, that it is a convenience to those people who do not wish to pay \$2.00 to have an opportunity to see the picture at fifty cents at some future time, isn't that right?

A. They can see it for fifty cents, yes, sir.

Q. Right? [1034] A. Yes.

Q. Now, are you familiar, Mr. Pirosh, with the pictures other than Fox pictures which played the

(Testimony of Bert Pirosh.)

Loyola Theatre from the period of August 1950 through September of 1951?

A. I think that there were a few of them, yes.

Q. Do you know what pictures other than Fox pictures—that is, what other distributors played in that theatre during the period from August of 1950 to September of 1951?

A. I am not positive as to which pictures played or which distributors.

Q. You know, do you not, that none of the defendants in this case, none of the defendant distributors—Warners, Loew's, Paramount or Universal played a single picture in the Loyola Theatre from August 1950 to September 1951. You know that, don't you?

A. I don't know it, but it is quite possible.

Mr. Johnston: Is there any dispute about that, Mr. Corinblit?

Mr. Corinblit: I don't believe there is.

Mr. Johnston: Thank you.

Mr. Corinblit: We are preparing a play-off on the Loyola Theatre and we will confirm that fact later.

Mr. Johnston: It is your present belief that my statement is correct?

Mr. Corinblit: Yes, it is.

Mr. Johnston: Thank you. I have no further questions. [1035]

Mr. Mitchell: Your Honor, I simply wish to offer in evidence the two documents that were used to refresh Mr. Pirosh's recollection. One letter is from

(Testimony of Bert Pirosh.)

Mr. Kupper, dated September 5, 1950, initiating competitive bidding and the letter or the memorandum dated May 17, 1951, terminating competitive bidding in the Inglewood area. These letters are marked respectively at the present time for identification Defendant Warner's Exhibits G-5 and G-6.

Mr. Corinblit: On that, your Honor, without waiving our general objection with respect to inter-office matters that we presented a memo on to you, we will not make any objection to the introduction of these two exhibits.

The Court: They may be received in evidence.

(The documents referred to were received in evidence and marked Warner's Exhibits G-5 and G-6 respectively.) [1036]

* * * * *

Q. (By Mr. Corinblit): Mr. Pirosh, I will show you Defendants' Exhibit P-62——

Is this marked for any particular defendant, or just P-62?

Mr. Bakaly: It is Joint Defendant Distributors' Exhibit.

Q. (By Mr. Corinblit): I ask you to read this letter [1040] and see if it refreshes your recollection with regard to a meeting with Mr. Ball around September 1949? A. This is hard to read.

Mr. Mitchell: I would suggest, your Honor, if he is going to do something with this letter, unless you want to go on a while, we better stop now, because this is a new gambit involving Columbia, and not involving Mr. Pirosh.

(Testimony of Bert Pirosh.)

The Court: Mr. Pirosh can read the letter. The question is, does it refresh his recollection. He can answer that yes or no.

Mr. Corinblit: I don't want to bring Mr. Pirosh back if I can avoid it, so we might as well do it now.

Mr. Johnston: I don't see Mr. Pirosh's name mentioned in this document at all, Mr. Corinblit.

The Court: Well, let Mr. Pirosh answer. Does that refresh your memory in any way?

The Witness: My name isn't mentioned in this, that I can see.

The Court: Did you ever see that letter before?

The Witness: No, sir.

The Court: Even though it refreshes his recollection, you can't introduce the letter, can you, just on that basis?

Mr. Corinblit: No. We will have to call a Columbia witness, your Honor. We will withdraw the offer. [1041]

* * * * *

LAWRENCE W. MARRIOTT

called as a witness on behalf of the plaintiff, under Rule 43(b) of the Federal Rules of Civil Procedure, having been first duly sworn, testified as follows:

The Clerk: Will you state your name, please?

The Witness: Lawrence W. Marriott. [1046]

Direct Examination

Q. (By Mr. Corinblit): Mr. Marriott, by whom are you employed?

A. Universal Film Exchange.

(Testimony of Lawrence W. Marriott.)

Q. That is the Universal Company that is a defendant in this case? A. Yes, sir.

Q. And how long have you been employed by that company? A. About 12 years.

Q. And how long have you been employed by that company in Los Angeles?

A. The full length of time.

Q. And from the time you came to Los Angeles through 1949, '50 and '51, what job did you have with Universal here in Los Angeles?

A. Branch manager of the Los Angeles Exchange.

Q. As branch manager of the Los Angeles Exchange, what area did your authority cover?

A. We covered Southern California, Arizona and a few towns in Nevada.

Q. Calling your attention, Mr. Marriott, to the years 1949, '50 and '51 and particularly to the year 1950, February 6, 1950, I will show you a document which has been marked as Plaintiff's exhibit for identification 14-A, and [1047] ask you whether or not you received the original of this letter at the Universal Film Exchange? A. I no doubt did.

Mr. Corinblit: I will offer in evidence Plaintiff's Exhibit 14-A.

The Court: It will be received in evidence.

(The exhibit heretofore marked Plaintiff's Exhibit 14-A, was received in evidence.) [1048]

* * * * *

Q. (By Mr. Corinblit): On the same date, a

(Testimony of Lawrence W. Marriott.)

copy of that same letter was sent to Universal in New York with an enclosure, Mr. Marriott—

Mr. Corinblit: I will offer in evidence Plaintiff's Exhibit 14-B.

The Court: It may be received in evidence.

The Clerk: Exhibit 14-B.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 14-B.)

The Court: What is the date of that letter?

Mr. Corinblit: February 6, 1950, the same date.

* * * * *

Q. I will show you next, Mr. Marriott, a letter which has been marked as Plaintiff's Exhibit 14-C, which is a letter from Mr. Blake to Mr. Schreiber dated February 15, 1950, and ask you if you received a copy of this letter on or about the time it was mailed to Mr. Schreiber.

A. I am satisfied I did.

Mr. Corinblit: I will offer in evidence Plaintiff's Exhibit 14-C.

The Court: It may be received in evidence.

The Clerk: Exhibit 14-C.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 14-C.)

Mr. Corinblit: Exhibit 14-C, the letter from F. M. Blake to Mr. Alex Schreiber—

Q. Who is Mr. Blake, or was he in February, 1950, Mr. Marriott?

A. Mr. Blake was the western sales manager.

Q. What area did his authority cover?

A. As far east as Chicago. [1051]

(Testimony of Lawrence W. Marriott.)

Q. And from the Pacific Coast to Chicago?

A. That is correct.

Q. Roughly cutting the United States in half?

A. That's right. * * * * *

Q. Subsequently, in about April, 1950, Mr. Schreiber did have a discussion with you at your office in Los Angeles, isn't that right?

A. I believe so.

Q. Now, that discussion had to do in part with first [1052] run Los Angeles, did it not?

A. No, sir. To my knowledge, the first trip Mr. Schreiber, when he visited our office, he just come in to get acquainted with the men in the Los Angeles area.

Q. In other words, there was a time when Mr. Schreiber came in to visit with you and to get acquainted with the men in the Los Angeles area?

A. That's right.

Q. Was there a time when he came in to talk to you and did talk to you about first run pictures?

A. I don't remember that he did.

Q. You do recall that in 1950 the operators of the Paradise Theatre asked Universal for the privilege of licensing their pictures on Los Angeles first run, you do recall that? A. I think that's right.

Q. That request was, to your knowledge, for first run Los Angeles, isn't that right?

A. I think that's right.

Q. Now, in 1950, with respect to Universal, the fact is, is it not, as has been testified to heretofore, that Universal was licensing its pictures customar-

(Testimony of Lawrence W. Marriott.)

ily to a theatre downtown, the United Artists Theatre? A. Correct.

Q. A theatre in Hollywood—do you remember the name [1053] of the theatre at that time?

A. It was no doubt the Iris or the Fox Guild.

Q. Or perhaps the Vogue?

A. Or the Vogue.

Q. The Vogue, Iris, or the Guild.

A. That's right.

Q. And a theatre on Wilshire Boulevard known as the Ritz Theatre? A. That's right.

Q. A theatre in Studio City known as the Studio City Theatre? A. That's right.

Q. And a theatre in Culver City known as the Culver Theatre? A. I presume so.

Q. Now, the theatres on Hollywood Boulevard with whom you were licensing first run at that time were all less than a thousand seats, you remember that, don't you? A. That's right.

Q. The theatre in Studio City was less than a thousand seats? A. That's right.

Q. The theatre in Culver City was less than a thousand seats? A. That's right. [1054]

Q. The theatre on Wilshire Boulevard was about 1,300 plus seats? A. In that neighborhood.

Q. And the theatre downtown was quite a large theatre, the United Artists Theatre?

A. About 2,000 seats.

Q. Now, in fact, Mr. Marriott, you remember your company had been licensing first run to this

(Testimony of Lawrence W. Marriott.)

group of theatres since at least 1946, isn't that right? A. I think that's right.

Q. You recall also, do you not, that during this period from 1946 to 1951 when you were licensing your pictures first run to this group of theatres, Universal received no offer from Warner's, RKO, Paramount, the Egyptian, or the Loew's Theatres to buy Universal pictures on first run, isn't that correct?

A. I think that's right, to my knowledge.

Q. And it is also true during that period Universal did not offer its pictures to any of this group that I have mentioned, is that correct?

A. As far as I know, that is correct.

Q. Now, at the time Mr. Schreiber on behalf of the Paradise asked for first run, that request on behalf of Mr. Schreiber was rejected by your company, was it not? A. That's right. [1055]

Q. What was the reason that your company stated to Mr. Schreiber as being the reason for rejection?

Mr. Mitchell: I think we better lay a foundation for this, your Honor. He says the company. Companies don't talk, and I think we ought to see who was there, if he knows.

The Court: Was this rejection in writing or was it oral?

The Witness: I don't recall. I don't recall. [1056]

Mr. Mitchell: I think there is a writing, your Honor, and if he wants the conversation I have no objection—if he knows anything about the conver-

(Testimony of Lawrence W. Marriott.)

sation, but to me it is incongruous that a company talks. Somebody must speak.

Q. (By Mr. Corinblit): Well, now, in April of 1950, after Mr. Schreiber had made the request for the opportunity to license your pictures on first run in Los Angeles, he had a conversation with you in your office in Los Angeles about that subject, didn't he? A. No, sir, I don't remember that.

Q. You don't recall whether he had a conversation or did not?

A. I don't recall having a conversation with Mr. Scheiber about first run product.

Q. Isn't it a fact that Mr. Schreiber and his son Max came in to see you on or about April 12, 1950, at about 1:15 p.m.?

A. I don't know what time. I think Mr. Schreiber and his son visited me in my office, that is true.

Q. Do you remember that he and his son visited you in your office? A. That is right.

Q. All right. Now, the question is, did Mr. Schreiber and his son discuss with you the matter of first run pictures? A. I don't think he did.

The Court: Was it just a friendly visit?

The Witness: Yes, sir. Mr. Schreiber's visits were all short—just a very few minutes, because I think he realized I was a busy man and he was a busy man.

The Court: All the visits that Mr. Schreiber had with you were friendly visits, just for the purpose of getting acquainted?

The Witness: Yes, sir.

(Testimony of Lawrence W. Marriott.)

Q. (By Mr. Corinblit): Well, now, you heard me read into evidence just a few minutes ago—I think the court reporter has taken the document, but you heard me read the letter from Mr. Blake advising Mr. Schreiber to discuss the matter of his request about first run with you or Mr. Rose. You heard that, didn't you? A. Yes, sir.

Q. Now, it is your testimony that Mr. Schreiber and his son did not discuss that matter of first run with you in your office in Los Angeles on or about April 12, 1950?

A. That is right. I don't remember, I don't remember that he did.

The Court: Do you remember he discussed that matter at any time?

The Witness: No, sir, not personally.

The Court: In your office?

The Witness: No, sir. [1058]

Q. (By Mr. Corinblit): Now, isn't it a fact, Mr. Marriott, that Mr. Schreiber with his son came in and talked with you at that time and you told them—they asked you for first run and you told them that your pictures were being sold to the same combination and you didn't see how they could add any other theatres to the group?

A. I don't remember telling him that.

Q. Didn't he tell you about the area in Los Angeles where the theatre was to be located and didn't you tell him at that time that you knew the area very well because you passed it quite often

(Testimony of Lawrence W. Marriott.)

by car as well as when you took airplane trips on behalf of your company?

A. That could have happened.

The Court: But you don't remember it.

The Witness: I no doubt told him that because I do live in Inglewood myself.

Q. (By Mr. Corinblit): And you do remember telling him that that area in which he was building a theatre was a very fine area, isn't that correct?

A. No, sir, I don't remember telling him that.

Q. And did you tell him not only—didn't you tell him that it was not only a fine area, but it should do a very fine business regardless of what run pictures he got?

A. No, sir.

Q. You did not tell him that? [1059]

A. Not to my knowledge.

Q. Didn't you tell him at that meeting in effect you could not make any statements or commitments on the run requested because that was up to Mr. Rose, your district manager, and Mr. Rose had recently replaced Mr. Blake who was to have made the decision originally. Did you tell him that?

A. I could have. I don't remember doing it, but I could have.

Q. Now, the things that you could have done you say. Did they occur at a meeting with Mr. Alex Schreiber on or about April—in or about April, 1950?

A. As I stated before—I don't—the questions you asked me I told you I didn't remember. Naturally, something was said when he was there in

(Testimony of Lawrence W. Marriott.)

April. He just didn't come in and sit there to entertain himself. He said something.

Q. He didn't ask you for first run?

A. To my knowledge, no.

Q. Didn't he tell you that he had been during that precise period going from distributor to distributor discussing the matter of first run? Didn't he tell you that?

A. I don't remember that he did.

Q. Mr. Marriott, I will show you a document which is a memorandum of that conversation, marked Plaintiff's [1060] Exhibit 14-D for identification, a memorandum made by Mr. Schreiber. I want you to look it over and——

Mr. Mitchell: There is no evidence to that effect. I think these memoranda that are being used should be properly introduced through a foundation laid and I don't see how a memorandum made by somebody else can refresh the recollection of this witness.

The Court: The memorandum is being shown the witness for the purpose of refreshing his recollection.

Mr. Mitchell: Counsel proceeds to state what it is as though it were in evidence.

The Court: It is not in evidence, but he is trying to describe the memorandum. It has to be described in some manner.

Q. (By Mr. Corinblit): I will ask you to examine Plaintiff's Exhibit 14-D. Read it over and tell me if that refreshes your recollection about a meeting with Mr. Alex and Max Schreiber on or

(Testimony of Lawrence W. Marriott.)

about April 12, 1950. A. (No answer.)

Q. The question is, Mr. Marriott, does that refresh your recollection whether in April of 1950, on or about April 12, Mr. Schreiber and his son came into your office, discussed the matter and asked you whether or not Universal would license first run pictures to the Paradise Theatre? Does it refresh your recollection? [1061]

A. It doesn't in regard to the first run pictures, no, sir.

The Court: Does it refresh your recollection in any other way?

The Witness: The only thing it refreshes my mind was when he mentioned about my telling him that I lived in Inglewood and I knew the area. That is the only thing that refreshes my mind.

The Court: That is the only thing you can remember now of the conversation?

The Witness: Yes, sir.

Mr. Corinblit: I would like to offer in evidence Plaintiff's Exhibit 14-E, which is a letter, Simon to Universal in New York, dated April 17, 1950.

The Court: It will be admitted in evidence.

The Clerk: Exhibit 14-E.

(The document heretofore marked Plaintiff's Exhibit 14-E, was received in evidence.)

Mr. Corinblit: This is a letter—

Mr. Mitchell: Since no foundation has been laid for it, and I haven't raised any question about foundation, but I think we should agree, though, on who Mr. Simon is.

(Testimony of Lawrence W. Marriott.)

Mr. Corinblit: Yes. Mr. Simon was the attorney for the Paradise Theatre Building Company.

Mr. Westbrook: With offices in Chicago. [1062]

Mr. Corinblit: Yes, with offices in Chicago.

The Court: Is that stipulated to?

Mr. Mitchell: Yes.

Mr. Corinblit: Yes. * * * * * [1063]

Mr. Corinblit: We will next offer in evidence Plaintiff's Exhibit 14-F, which is a letter from Landau to Simons dated May 4, 1950.

Mr. Mitchell: I am not objecting that there is no foundation. It is Cyril C. Landau. I would like to have you agree that Mr. Seymour Simon, an attorney, wrote the letter to Mr. Landau, an attorney for Universal in New York, who is the man who is replying, is that right?

Mr. Corinblit: Yes.

The Court: It may be admitted in evidence.

The Clerk: 14-F.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 14-F.)

Mr. Corinblit: Was Mr. Landau house counsel of Universal at that time?

Mr. Westbrook: I can't state that with accuracy. He was a member of the legal staff, at least. [1065]

* * * * *

Q. (By Mr. Corinblit): You received a copy of this letter on or about the time it was mailed, did you not, Mr. Marriott? A. Yes, sir.

Q. Now, to go back for a minute to the time

(Testimony of Lawrence W. Marriott.)

when you learned, when you received the first letter from Mr. Schreiber asking for first run Los Angeles, which is in about February, I want to ask you, Mr. Marriott, with respect to the 7 day situation in the Inglewood-Westchester area, the fact is, is it not, that for about at least four or five months before February, Universal had been splitting its product between Fox and the La Tijera Theatre, isn't that correct? A. Not to my knowledge.

Q. Isn't it a fact that Universal during that period was licensing its pictures one by one as they came off on negotiation, no bidding, to Fox, or to the La Tijera, isn't that correct?

A. Or to the United Artists.

Q. Or to the United Artists?

A. The United Artists.

Q. But it was doing it by negotiation, correct?

A. That is true.

Q. Do you remember in your deposition when I took your deposition some time ago, I asked you approximately the same question and you stated that there was bidding during [1068] that period?

A. That is——

Mr. Mitchell: Just a minute. If we are going to have the deposition brought in, perhaps we better have what he said. That isn't the proper way to do it.

The Court: I will sustain the objection.

Q. When you gave your pictures to these theatres on negotiation, did you negotiate with all three theatres for every picture, or would you negotiate

(Testimony of Lawrence W. Marriott.)

with one theatre for one picture and rotate the pictures?

The Witness: No. We negotiated with everybody.

The Court: For the pictures?

The Witness: Yes.

The Court: In other words, you had three negotiations for each picture?

The Witness: It could have been more than three. When I said three, the Southside was also involved in these arrangements. The Rio was also involved. In other words, we negotiated with all theatres in the Inglewood-Westchester area.

The Court: Well, I understand you didn't pick out one theatre and went and negotiated with that one theatre and ignored the other theatres?

The Witness: No, sir.

The Court: You brought them all in and negotiated [1069] with all of them?

The Witness: And got the best terms you could and that was the deal that you accepted.

Q. (By Mr. Corinblit): Now, Mr. Marriott, do your answers to the court's questions refer to the period from September, 1949 through March or April, 1950?

A. During that time, I stated that we were bidding. I was under the impression that we were. Since that time I have had a chance to look at the records and I find that bidding was discontinued in late 1949 and again bidding started in 1950, in April or May, somewhere in that time. But the informa-

(Testimony of Lawrence W. Marriott.)

tion I gave you was incorrect. But, as I stated, I checked the records and I find that what I am telling you now I am satisfied is the right information.

The Court: The question Mr. Corinblit asked you a moment ago as to the time, when I asked you the questions I did, I was referring to the time designated by Mr. Corinblit.

The Witness: 1949 to——

The Court: 1951.

The Witness: 1951.

The Court: That was the time you were referring to in your answers?

Mr. Mitchell: It was not 1949 to 1951. It was 1949 to March, 1950, that is what Mr. Corinblit asked.

The Witness: Yes. [1070]

The Court: That was the time you were referring to in your answers to me?

The Witness: Yes, sir.

The Court: All right.

Q. (By Mr. Corinblit): Now, as I understand your answer, Mr. Marriott, you are stating that during the period from September, 1949 to about, as Mr. Mitchell states, March, 1950, you were negotiating, not with one theatre as the pictures came off, with one theatre and then another, but negotiating with both theatres, or three theatres?

A. All theatres in that area.

Q. Don't you know that in this case Mr. Pirosh of Fox has testified that during that period he and

(Testimony of Lawrence W. Marriott.)

Mr. Kupper would decide what theatre would negotiate with you for a particular picture?

Mr. Mitchell: I don't know that that was Mr. Pirosh's testimony, and I don't think it makes any difference whether this witness knows what Mr. Pirosh testified to.

The Court: Sustained.

Q. (By Mr. Corinblit): Do you deny that that was the fact, that in fact what happened was that Fox would negotiate with you for one picture, and the La Tijera would negotiate with you for another picture, and if the United Artists Theatre negotiated with you at that time, they would negotiate for another picture? You deny that? [1071]

A. I sure do.

Q. I want to show you, Mr. Marriott, a document which has been admitted in evidence—and we are to provide another copy which we have here—Exhibit 51. This Exhibit 51 is a cut-off card from your company, isn't that right?

A. That's right.

Q. For the series 681, right?

A. That's right.

Q. And this covers in part at least the period that you and I are now talking about, isn't that right? A. That's right.

Q. In the right-hand corner under the additional terms is a reference in your files, that is, in your company's files, "Bidding situation Inglewood first run," and a line drawn through it, and then

(Testimony of Lawrence W. Marriott.)

the words "split with Fox." What does this term "split with Fox" mean?

A. Split means a lot of things. Everybody interprets split in different manners. As far as I am concerned, split means the exhibitors can split the product amongst themselves. The exchanges can agree to a split, or a split can mean pictures that go to all theatres in that area, they don't go to just one theatre. They are split amongst all of them, whoever makes the best deal.

Q. Now, split is the equivalent of a division, isn't that right? Isn't that the way you interpret the word? [1072]

A. No, sir. I just explained to you how I interpret the word.

Q. Now, you are telling me that under this split—do you know who made this entry?

A. No, sir.

Q. This is in Universal's records.

A. Yes, sir.

Q. The person who made the entry was under your jurisdiction? A. That is true.

Q. Who was the person that ordinarily makes such entries? A. This a booking card.

Q. A booking card.

A. In our booking department, we have four bookers.

Q. And you would have given an instruction to make such an entry? A. No, sir.

Q. Would you have to send a memorandum to make such an entry? A. No, sir.

(Testimony of Lawrence W. Marriott.)

Q. What person in Universal would have been talked to with respect to that entry on that cut-off card?

Mr. Mitchell: Talked to by whom?

Mr. Corinblit: By anyone who arranged the split. [1073]

Mr. Mitchell: That assumes somebody arranged the split, your Honor.

The Court: Well, the split isn't made without somebody doing something. Somebody has got to do something.

Mr. Mitchell: Nobody has to do anything with Universal.

Mr. Corinblit: It got onto their records just by accident.

Mr. Mitchell: They put the pictures out and let the one have it that makes the highest offer for it. That is what Mr. Marriott said.

The Court: Here is another term you are using. Everybody understands what the term split means, but everybody has a different interpretation. I don't know. [1074]

The Witness: That is exactly what I stated.

Q. (By Mr. Corinblit): Now, on the 7-day availability pictures you were the man responsible generally for supervising the sale of pictures on 7-day availability at that time, were you not?

A. That is true.

Q. So that if there were negotiations between an exhibitor and Universal about 7-day availability at that time it was with you, is that right?

(Testimony of Lawrence W. Marriott.)

A. That is right.

Q. Now, you know that no sub—no person working under you has any authority to place any such entry in a cut-off card without first getting some authority from someone above him, don't you?

A. That isn't true.

Q. That is, the man who had this card if he wanted to, could just strike out "bidding" and put in "split with Fox," is that right?

A. He knew the bidding was discontinued.

Q. How did he know that?

A. He was informed of that.

Q. By whom?

A. By the—it would come through me.

Q. So that you did—it was your information that was used to draw this line through "bidding situation Inglewood [1075] area," right?

A. No, sir.

Q. Well, now, Mr. Marriott, you just testified that the information that bidding was discontinued came through you.

A. Yes, sir.

Q. And that that line drawn through "bidding" would have been drawn as a result of that statement from you to the individual?

A. That is partly true—that is part true.

Q. Now, how about the next entry, "split with Fox?"

A. That I know nothing about.

Q. Now, did you ever see this document before?

A. There is no reason why I ever look at cut-off cards, booking cards.

We have the sales department. We have our own

(Testimony of Lawrence W. Marriott.)

cut-off records which are maintained in the same manner as a booking card from the daily performances of pictures. For that reason the booking department is never taken from the booking department by anyone.

Mr. Mitchell: You said the booking department was never taken from the booking department.

The Witness: Booking card, booking card is never taken from the booking department because you never know when they may need it to book a situation and we can't be looking all over the office to see who has this record. [1076]

Q. (By Mr. Corinblit): What cards do you maintain that you use?

A. We have a cut-off which is a duplicate of the booking records.

Q. Where is that cut-off?

A. That I do not know.

Q. Is it in your office?

A. To my knowledge, no.

Q. Was it destroyed?

A. To my knowledge, yes.

Q. When? A. In August 19—last year.

Q. This case was pending at that time, was it not? A. Yes, sir.

Q. And you knew it was pending from 1951 on, didn't you? A. Yes, sir.

Q. And you were served with a copy of the summons and complaint, were you not?

A. That is right.

Q. Now, that document if we had it, could tell

(Testimony of Lawrence W. Marriott.)

us whether or not the entry "split with Fox" was on your record, wouldn't it? A. Certainly.

The Court: Mr. Corinblit, isn't this Universal?

Mr. Corinblit: Yes.

The Court: You say "on your records."

Mr. Corinblit: That is a Universal record.

The Court: You mean on Universal's records?

Mr. Corinblit: Yes.

The Witness: The duplicate record.

Q. (By Mr. Corinblit): Now, Mr. Marriott, it is a fact, is it not, that when exhibitors come in and discuss with you a matter of splitting a product with Fox you make a memorandum of such conversation, don't you? A. Sometimes.

Q. It is your practice to report to New York matters discussed with respect to deciding who is to get 7-day pictures in an area as important as this area? Do you report that to New York?

A. In negotiating deals?

Q. Yes.

A. I have the authority to make deals myself.

Q. And then you report them to New York for approval?

A. The deals that I make for approval.

Q. Where are the memoranda covering this period?

A. As I have stated before, not only this memorandum but many memorandums were destroyed last year when our exchange moved to a new headquarters.

We moved to a new building at 2001 South Ver-

(Testimony of Lawrence W. Marriott.)

mont. Our [1078] old quarters have been maintained for a number of years.

At that time we had an auditor from our home office by the name of Mr. John Rickets who came into the office and destroyed a lot of records, which we are sorry they are gone. We wish we had them ourselves today.

Mr. Corinblit: Counsel, would you produce for me those records of Universal which you do have?

Mr. Johnston: They have been produced for you.

Mr. Mitchell: They are here. They are already produced. I don't like the implication of counsel, "You produce for me these records." These records have been produced for counsel for a long time and have been here in court so that he could use them. We don't have to produce them.

Mr. Corinblit: There is no contention that these documents haven't been available at all times.

Mr. Mitchell: We don't have to produce them. They are here.

Mr. Corinblit: I will withdraw that statement. I have never seen these documents before.

Mr. Mitchell: That is your fault.

The Court: They were available?

Mr. Bakaly: They have been available for weeks, Mr. Corinblit, and you were told they were here.

Mr. Corinblit: I deny that.

Counsel, I would request of you the originals of the [1079] letters from Mr. Schreiber to Universal.

Mr. Mitchell: All the papers that we know anything about involving Universal are either on your

(Testimony of Lawrence W. Marriott.)

table there or have been marked as exhibits. We don't know any others involving this case.

Mr. Corinblit: When you say you don't know, you mean to say you don't have any others?

Mr. Mitchell: That is right.

The Court: You don't know about any others and haven't any others?

Mr. Mitchell: That is right. We have attempted to locate all documents that would be material to this case and those that we thought were material we have had marked as exhibits and everything has been made available to counsel.

Mr. Corinblit: I don't want to quarrel with the statement but I am asking for the originals of the letters which were produced for me by Mr. Bakaly. If you check with Mr. Bakaly I think you will find that to be correct.

Mr. Mitchell: It is my error. There are some we had here—the Syd Lehman letter. Is that the one you are looking for?

Mr. Corinblit: Yes. That is what I am looking for.

Q. (By Mr. Corinblit): Now, so we get it clear, the document I have in front of me here that has been produced by counsel, does not include any correspondence other than the [1080] papers that I have in my hand and that you have just given me, is that correct?

Mr. Mitchell: I will have to look. I don't know why you don't go on. What is the difference if

(Testimony of Lawrence W. Marriott.)

you want to examine the witness? I don't want to be examined in this case.

Q. (By Mr. Corinblit): Now, Mr. Marriott, I want to show you some original letters written by Mr. Syd Lehman to Universal which have been produced from your company's files.

They cover a period from March 26th to May 18, 1951.

Mr. Corinblit: And I will ask your Honor at this time that these documents be admitted into evidence and we will provide copies of the documents.

The Court: They may be marked and received.

The Clerk: Exhibit 52 in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 52.)

Q. (By Mr. Corinblit): Now, Mr. Marriott, I want you to tell me again when the auditor from New York destroyed the records of Universal.

The Court: Some of the records.

Mr. Mitchell: Some of the records. We have the contracts here and the pertinent things.

Q. (By Mr. Corinblit): When did the auditor in New York destroy some of your records?

A. He was in our exchange in July last year, July of [1081] 1955 through the opening of our exchange, which was in the middle of August, 1955.

During that period, before we moved into the new headquarters, he is the man who destroyed a lot of records.

Q. (By Mr. Corinblit): Now, Mr. Marriott, can

(Testimony of Lawrence W. Marriott.)

you describe for me the documents, the class of documents, that were destroyed in July of 1951?

A. No, sir, I don't know all that was destroyed.

Mr. Mitchell: You mean in July of 1955.

Mr. Corinblit: Yes, July, 1955. Thank you. I am sorry. I didn't hear your answer.

The Witness: I say I don't know all the documents that were destroyed. I didn't destroy them so I don't know.

Q. (By Mr. Corinblit): Now, the records, the correspondence that you have in front of you that have been marked as Plaintiff's Exhibit 52——

A. Yes, are original records from Universal's files during the period March 26 to May 18.

Q. Now, can you tell me how it was that these documents were preserved and the documents or any memoranda or correspondence relating to any split with Fox, any discussions with exhibitors were destroyed?

Mr. Mitchell: That assumes there were memoranda on "split with Fox" or discussions with exhibitors. I object to it on the ground it forces the witness to answer a question [1082] to something that is not in evidence.

The Court: Objection sustained. This witness says he doesn't know which records were destroyed.

Q. (By Mr. Corinblit): Now, Mr. Marriott, in 1949 when you were, as you testified to, when you were negotiating for 7-day pictures, do you remember that when you negotiated with the La Tijera Theatre that you negotiated to permit the

(Testimony of Lawrence W. Marriott.)

La Tijera Theatre to play simultaneously with the Imperial Theatre?

A. That isn't true. When you negotiate for a picture you negotiate picture by picture and theatre by theatre.

Q. Now, when you negotiated with the La Tijera you ultimately ended up negotiating day and date in the Imperial?

A. That probably was—no doubt they either received the best offer or there was nothing else available, but it was at least the best offer that I could secure in that area.

Q. But you did—Universal did permit the exhibition of your pictures on a 7-day availability day and date in the La Tijera Theatre located here and the Imperial Theatre located here, is that correct?

A. That is right.

Q. It has been stipulated to in this case, Mr. Marriott, that that distance is approximately five miles.

Mr. Westbrook: My record, counsel, doesn't indicate we have a stipulation to that mileage. I will be glad to check [1083] it.

Mr. Corinblit: I think that you will find you obtained that mileage and it was stipulated to.

The Court: May I ask the witness a question?

Mr. Corinblit: Yes.

The Court: You say your pictures were allowed to play day and date with these two theatres.

In your opinion were they in substantial competition with each other?

(Testimony of Lawrence W. Marriott.)

The Witness: It all depended on our pictures. In other words, in selling our pictures at times we don't have all these top pictures that everybody else blows off about that they are the top guys, and so forth.

We don't profess to have the block-busters and all that with the exception of maybe one or two a year. Sometimes we don't have any. And then when it comes down to our pictures it is a matter of disposing of our pictures which many a time are used as a companion picture, which means the second feature, but there are a lot of times, as I state we make good pictures, but—and there are many times that an exhibitor didn't have our pictures as a companion picture and he might not do so well on the top picture because a lot of times the top picture on which they spend a lot of money to make—it costs all the way from a million, two million, three million, they say. Sometimes they are a flop or a bust at the boxoffice [1084]² and a lot of the time the patrons who come out from the theatre will say to the manager or the doorman, "My, that was a fine second picture," whatever it might be. So they go home satisfied and well pleased.

We get the small end of the money and the guy who has the big block-buster he gets the big percentage and he thinks he has done a great job where it is a case where we feel we have done the good job because we know that to be a fact. We hear that and we also have previews. We have all these shows that they describe. We see the comments

(Testimony of Lawrence W. Marriott.)

from the patrons and we know when the patrons put on there some of the words you couldn't describe in court—they would probably toss you out, but there are other words you can say on there—"excellent, good," and even sometimes they go in advance and state that a picture, as I stated, your class of picture—they liked it but didn't like the other one, of course, the so-called big companies don't like that. [1085]

The Court: Let's get back to my question.

The Witness: All right.

The Court: You know what substantial competition is, don't you?

The Witness: Yes, most assuredly I do.

The Court: Did you consider these two theatres in substantial competition at this particular time?

The Witness: I did consider them in substantial competition, yes.

The Court: All right. That's all I wanted you to say.

Q. (By Mr. Corinblit): Now, Mr. Marriott, when you negotiated with Fox for 7 day pictures, at this time do you remember whether Fox played pictures simultaneously with other theatres in the area?

A. I don't remember, but I would say that there was occasions when they did.

Q. There might have been an occasion when Fox played simultaneously between the Academy and the La Tijera Theatres, isn't that right?

A. That could be.

(Testimony of Lawrence W. Marriott.)

Q. And certainly there were many occasions—I will withdraw that.

There were occasions when the Academy played day and date with the Southside Theatre? [1086]

A. I think that's right.

Q. And there were occasions when the Academy played day and date with the Fifth Avenue Theatre? Did that happen?

A. The Academy and Fifth Avenue, no, that couldn't be.

Q. All right.

A. You can spit from one to the other.

Q. Now, were the Academy Theatre and the Southside Theatre in substantial competition?

A. In my opinion, yes.

Q. When Mr. Schreiber in February and then in April asked for 7 day pictures, Universal, your company, refused to permit him to negotiate for 7 day pictures, is that correct?

Mr. Mitchell: Now, that assumes a fact not in evidence. This witness says he doesn't know about any asking for pictures in February, so to ask him that double-barreled question puts him in the position of answering something that is not in evidence. I object to it on that ground.

Mr. Corinblit: Now, your Honor, that is not correct. I read the letter dated February 6, 1950, of which the witness stated he received a copy that is addressed to him.

The Court: Overruled.

(Testimony of Lawrence W. Marriott.)

Mr. Mitchell: That didn't say anything about 7 day pictures. That says first run.

Mr. Corinblit: That is correct. [1087]

Mr. Mitchell: Then the question asked the witness to answer something that is not in evidence.

The Court: This witness, I think, can take care of himself on the witness stand.

Q. (By Mr. Corinblit): Limiting the question, Mr. Marriott, to 7 day pictures, it is a fact when the Paradise asked Universal for 7 day pictures in the spring of 1950, your company refused to negotiate with the Paradise for 7 day pictures, that is correct? A. Well——

Q. In the spring of 1950.

A. In the spring of 1950?

Q. Yes, sir.

A. What was there to negotiate? His house wasn't open at that time.

Q. You told him, however, that you would not negotiate? He was told that by your company, isn't that correct?

A. You just read the evidence, that's right.

The Court: Now, may I ask this witness a question?

Mr. Corinblit: Yes, sir.

The Court: Do you negotiate for a picture before a theatre is completed?

The Witness: No, sir. There is no use. That is, when I say before the theatre is completed, within a period of time of a week, two weeks, when the theatre knows he is [1088] going to open. But

(Testimony of Lawrence W. Marriott.)

the evidence that was read this morning, Mr. Schreiber was going to open his theatre in May, as I recall, and if I am correct on my dates, the theatre didn't open until August, and if he had bought pictures, your Honor, anticipating he was going to play them in May, he would have been a little bit backed up on pictures. He would have been worse off than Mr. Pirosh stated he was in his Inglewood Theatre, where he plays old pictures. He would have had the same class of house.

Q. (By Mr. Corinblit): Mr. Marriott, my question is this. I realize the theatre wasn't opened. The question is, did your company tell Mr. Schreiber in the spring of 1950 that you would not negotiate for 7 day pictures?

Mr. Mitchell: Your Honor, the evidence is here in the form of a letter.

The Court: I think the letter speaks for itself.

The Witness: That's right.

Mr. Mitchell: That's right. Bidding was going on then and they offered him the opportunity to bid.

The Court: The letter speaks for itself.

Well, I notice it's 11:00 o'clock. We will take a recess and you read the letter.

Mr. Corinblit: Yes, sir.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish [1089] you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of

(Testimony of Lawrence W. Marriott.)

the parties until this case is finally submitted to you.

With that admonition, we will now recess until 15 minutes after 11:00.

(Recess.)

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Mitchell: Yes.

The Court: You may proceed.

Q. (By Mr. Corinblit): The letter to which we are referring, Mr. Marriott, was the Exhibit 14-F in evidence in which Universal states that they will provide bidding between the Paradise and the Inglewood Theatres. Just to get this absolutely clear on the record, I think you testified to this, but I want it absolutely clear, Universal did provide 7 days on bid. It would not provide it on any other terms at that time, correct? A. At what time?

Q. In May, 1950, 7 days.

A. Thereabouts, that's right.

Q. So it would not provide it on a negotiated basis at that time? [1090] A. That's right.

Q. Subsequently a letter was sent by Mr. Simon to Mr. Landau, May 24, 1950, which is Plaintiff's Exhibit 14-G, which we will now offer in evidence.

The Court: It may be received in evidence.

The Clerk: 14-G.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 14-G.)

* * * * *

Q. (By Mr. Corinblit): Now, Mr. Marriott, Mr.

(Testimony of Lawrence W. Marriott.)

Feldman at the time of this letter was eastern district manager at that time, 1950, or was he sales manager?

A. He no doubt was eastern sales manager in 1950.

Q. And that same Mr. Feldman had been for many years branch manager in Los Angeles, is that right? A. That is right.

Q. And thereafter he had been district manager in Los Angeles? A. That is right.

Q. And he is now the general sales manager for Universal and a vice president of that company?

A. That is right.

Mr. Mitchell: So as to keep the continuity, can we have the reply to that?

Mr. Corinblit: Yes. The letter to which Mr. Mitchell refers is a letter dated June 2, 1950, from Mr. Landau to Mr. Simon with copies to Scully, O'Keefe, Schimel, Blake, Marriott and Rose.

We will offer that exhibit as Plaintiff's Exhibit 14-H.

The Court: It may be received in evidence.

(The exhibit referred to was marked Plaintiff's Exhibit 14-H, and received in evidence.)

* * * * *

Mr. Corinblit: And following that is a letter dated June 7, 1950, from Simon to Landau which the plaintiff will offer as Plaintiff's Exhibit 14-I.

The Court: It may be received.

(The exhibit referred to was marked Plain-

(Testimony of Lawrence W. Marriott.)

tiff's Exhibit 14-I, and received in evidence.) [1096]

* * * * *

Q. (By Mr. Corinblit): Now, Mr. Marriott, so we can get this clear, I think you testified before that your company took the position—your company played day and date on some pictures between the La Tijera and Imperial and they were about five miles apart.

Your company also played day and date between the Academy Theatre and the Southside Theatre. The Academy Theatre and the Southside Theatre, I think we have the distances on that. I will take it again, if you want to tell me. [1097]

Mr. Westbrook: 3.6 miles.

Mr. Corinblit: 3.6 miles.

Q. And I think you testified it was the opinion of your company that the Academy and the Southside were in substantial competition, correct?

A. That is right.

Q. Now, you notice that Universal refused the Paradise the privilege of playing day and date on the grounds that the Paradise and the Inglewood theatres were in substantial competition, isn't that correct?

A. No, it isn't correct. I think the Paradise Theatre played some pictures day and date.

Q. Now, it is not your testimony, is it, that you offered—that your company at that time offered to negotiate with the Paradise Theatre for day and date availability in that area? A. No.

(Testimony of Lawrence W. Marriott.)

Mr. Corinblit: Plaintiff will next offer in evidence Exhibit 14-K with the same provision. We offer the entire letter but your Honor has heretofore ruled a sentence out, and therefore we will only ask to read to the jury the portion of the letter with that sentence excluded.

Mr. Mitchell: Hasn't this letter already been read once to the jury?

Mr. Corinblit: The letter to Metro, but not the letter [1098] to Universal.

The Court: It may be received.

(The document referred to was marked Plaintiff's Exhibit 14-K, and was received in evidence.)

Mr. Corinblit: This letter reads as follows. It is dated August 22, 1951, and is addressed to Universal in Los Angeles:

"Gentlemen:

"Southside Theatre, who is operating the Paradise Theatre in association with the undersigned, has informed me that your local exchange has taken the position that the Paradise Theatre is in substantial competition to the Academy and that the Academy will require clearance over the Paradise."

Q. May I stop there for a moment, Mr. Marriott. That statement is correct, is it not, that the Academy Theatre required clearance over the Paradise? A. When?

Q. In August and September, 1950?

A. 1950?

Q. Yes. A. If he bought the picture?

(Testimony of Lawrence W. Marriott.)

Q. Yes. A. If he asked for clearance?

Q. Yes. [1099] A. No doubt he did.

Q. And Universal gave it to them?

A. If he paid enough money we gave it to him, yes.

* * * * *

Q. What is your—what was your company's official definition of "substantial competition" in 1950, if you know?

A. Substantial competition means that whatever theatres in the area they draw from the same vicinity and the same patronage. [1100]

Q. And in that connection what is the meaning of the word "substantial—" what was the meaning of the word "substantial"?

A. Substantial in my opinion covers it all over, covers the entire area.

Q. That is, they are in substantial competition with respect to the entire area. Is that what Universal—is that the meaning that Universal had?

A. That is my interpretation of the theatres in that area, yes, sir.

Q. Now, was that statement that you just made the position of Universal, if you know?

A. Well, I don't know.

The Court: Mr. Marriott, do you have competition relative to an area or do you have competition relative to the people in the area?

The Witness: To the people in the area.

The Court: People in the area?

The Witness: Yes.

(Testimony of Lawrence W. Marriott.)

The Court: So when you are talking about substantial competition within an area, you are talking about the people within that area?

The Witness: That is right.

Q. (By Mr. Corinblit): Now, did you have any opinion in 1950 as to how much the Academy Theatre would have been [1101] effected if the Paradise Theatre had been permitted to play day and date with the Academy? A. No.

Q. Did you have any opinion as to how much the La Tijera Theatre would have been effected by the Paradise, if the Paradise would have been permitted to play day and date with the La Tijera?

A. No.

Q. Did you have any such opinion with respect to the effect of the Paradise playing day and date on the Fifth Avenue or the Southside?

A. No.

Q. You had no such opinion at that time?

A. No.

Q. Now, this matter of substantial competition was not discussed by you with your superiors at that time either, was it? A. I don't think so.

Q. And when the Paradise Theatre—when the Paradise Theatre asked for a 7-day availability you didn't discuss with your superior the subject or any substantial competition that may or may not have existed between the Paradise and any other theatre in the area? A. That wasn't discussed.

Q. Now, when you say that you didn't have any opinion [1102] as to how much the Academy's busi-

(Testimony of Lawrence W. Marriott.)

ness would have been effected by the Paradise Theatre playing simultaneously, that is, you didn't have an opinion one way or the other even with respect to one per cent of it, isn't that right?

A. That is right.

The Court: When you say these theatres were in substantial competition on what do you base your conclusion?

The Witness: Well, as I stated, your Honor, many of our pictures—we don't receive the high percentages. Our pictures are usually used as a second feature and for that reason Universal has always—we sell our pictures not only in this area or this community but others as well, and if this happens to be the second feature—lots of times they are in demand and if we sell one man a run on a picture, maybe his fellow man down the street so far away—when I say “so far away” I mean three miles or whatever it might be, he may be in dire need of a picture. If the first man who we have sold our picture to and gives us the okay that we can also sell another man after he has been given clearance over that house, we then negotiate a deal.

The Court: You only gave clearance over theatres in substantial competition, didn't you?

The Witness: That's right.

The Court: You say these theatres are in substantial competition?

The Witness: That's right.

The Court: On what do you base that conclusion?

(Testimony of Lawrence W. Marriott.)

The Witness: We base the substantial competition on the same people in the same area, where they draw their patronage from.

The Court: All right. You just got through saying you didn't know how many patrons would be drawn from these different areas.

The Witness: I don't know how the business would be split. I can't tell that.

The Court: Do you base your conclusion of substantial competition on distance only, that is, you put an arbitrary figure that a theatre within two miles is in substantial competition?

The Witness: On our new plan which we have—we change our policy quite often, too—with the new plan we have, it is substantial competition by mileage.

The Court: By mileage?

The Witness: By mileage.

The Court: But it was not in 1950? [1104]

The Witness: In 1950, no.

The Court: What was the basis of substantial competition in 1950? What was your yardstick in 1950 to determine substantial competition?

The Witness: My yardstick, as I stated your Honor, is in two theatres, the La Tijera and the Paradise, we will say, and the Academy—they all draw patronage from the Inglewood area so that, therefore, they are in competition.

The Court: How do you know they do? Did you ever make a survey?

The Witness: No, I haven't made a survey, but

(Testimony of Lawrence W. Marriott.)

that is the general practice I will say. That is just the picture business. That is the only way I know how to explain it to you.

The Court: All right.

Q. (By Mr. Corinblit): Mr. Marriott, you have this morning in your answers to Judge Westover's questions, and something you said earlier, been telling the court and the jury that Universal pictures were pretty bad pictures in 1950. A. No, sir.

Q. Did you mean to say that?

A. No, sir, I didn't tell you that Universal pictures were bad pictures. I said Universal pictures are good pictures, but we don't have the big blockbusters, and there are even many a time our pictures satisfy the customer and the [1105] audience, the patronage, better than some of the so-called big pictures.

I am not a man who goes out and names my competitors' pictures. I know which ones do the big business and which ones gross a lot of money, one million, two million, three million. A lot of times they don't even get their costs out of their pictures. I know that. We make low budget pictures mostly.

Q. You had pictures in 1949, 1950 and 1951 that did great grosses, didn't you?

A. When you say great grosses——

Q. I mean grosses that are comparable to these other companies you are talking about.

A. Maybe that is a matter of selling. Maybe that is a matter of salesmen that we have working for our company. Maybe we do a better job than some

(Testimony of Lawrence W. Marriott.)

of these other companies do. Universal has always had the reputation of having a fine sales organization. We don't miss many dollars.

Q. As a matter of fact, in 1949 and 1950, Mr. Marriott, you had a picture—you had two pictures that grossed over a million dollars. You had a picture that grossed much more, over two million dollars. You had a picture that grossed a million eight; you had a picture that grossed a million three; two million one, one million nine, one million two, two million, one million three, one million, [1106] one million one, two million three, a million three. Does that sound right to you as far as the caliber of Universal pictures that you were distributing in 1949, 1950 and 1951? These are national grosses.

A. National grosses. That sounds right, but you tell me what that has to do with it?

Q. I thought you had been telling the court one of the reasons you have a different approach with regard to substantial competition, the definition, is that you don't have pictures that gross very much.

A. I didn't say that.

The Court: Well, if you have a picture that costs three million today and you gross a million dollars, that picture isn't any good. If you have a picture that cost five hundred thousand today and you gross a million, then it is a good picture.

Mr. Mitchell: I doubt that, because it would cost more than that to distribute the picture. You have got to make much more than that. It has to be more than a million to be any good.

(Testimony of Lawrence W. Marriott.)

The Court: Maybe the money is in the distribution of it. I don't know. It may not be in the making, but in the distributing.

Q. (By Mr. Corinblit): As a matter of fact, Mr. Marriott, in 1950 insofar as Universal had any basis for [1107] talking about substantial competition, it was really based on a guess or a hunch, wasn't it?

A. If you want to call it that. [1108]

* * * * *

Mr. Mitchell: Will you stipulate that letter was drawn by Seymour Simon, an attorney?

Mr. Corinblit: Yes, sir. I will stipulate it was drafted by counsel together with client.

Q. Now, Mr. Marriott, in fact during the period from August 1950, when the Paradise Theatre opened, to October—we can take it to November 1950, Universal did not license to the Paradise a single 7 day picture, is that correct?

Mr. Westbrook: Counsel, the second picture at the Paradise Theatre was a 7 day picture, The Desert Hawk, which was Universal.

Mr. Corinblit: You are right.

Q. Other than the picture Desert Hawk, you did not license the Paradise any 7 day picture, isn't that correct? A. I presume so.

Q. Now, on the picture Desert Hawk on the 7 day availability, you licensed that picture simultaneously with the Imperial Theatre, the Paradise located here and the Imperial Theatre at this point (indicating), is that correct?

(Testimony of Lawrence W. Marriott.)

A. I presume so. [1110]

Q. You never during that period licensed a 7 day picture simultaneously with the Fox West Coast Academy Theatre, did you?

A. Repeat that question.

Q. You never during that period from August to November 1950 licensed the Paradise a picture on a 7 day availability simultaneously with exhibition in the Academy Theatre, did you?

A. I don't think so.

Q. As a matter of fact, turning now to the period roughly from April 1951 to September 1951, Universal did not license to the Paradise Theatre a single 7 day picture, isn't that correct?

Mr. Mitchell: Wasn't that when they were playing the 21 day availability?

Mr. Corinblit: No, sir.

The Witness: I presume that's right. I don't recall.

Q. (By Mr. Corinblit): And during that period, that same period of time, you were licensing from time to time your pictures on a 7 day availability to the Academy Theatre, were you not?

A. As well as other theatres in the Inglewood-Westchester area.

Q. But not including the Paradise Theatre?

A. You are talking about 1950?

Q. Now I am talking about after the first picture in the first month, any picture during the period August to November 1950, or April to September 1951. I think you have already testified there

(Testimony of Lawrence W. Marriott.)

were no pictures licensed to the Paradise Theatre on the 7 day availability.

A. I presume that is right.

The Court: What happened to the other period? You have got a blank there.

Mr. Corinblit: Yes, sir. We will go into that now.

Mr. Mitchell: The Paradise won't bid.

The Witness: That is right. I know the answer.

Mr. Mitchell: They won't bid.

Mr. Corinblit: Now, your Honor, let's not have an argument by counsel. [1112]

The Court: Now, let us find out what happened in the interval. We have an interval here.

Mr. Corinblit: Yes. We are coming to that.

Q. (By Mr. Corinblit): Now, Mr. Marriott, after the Paradise had sought to purchase 7-day pictures from your company during the period—well, they opened the discussions as early as May 1950, but attempted to purchase pictures on the 7-day availability through November or early December of 1950.

Did you have a discussion with Mr. Schreiber concerning availability of pictures in the Paradise?

A. As I stated, you have given me so many dates, but as I stated before, during 1949, during the latter part of 1949 to the early part of 1950 we was negotiating for pictures. Bidding was discontinued. In 1950 on bidding was instituted again in the Inglewood-Westchester area and the opportunity was given to the Paradise Theatre to bid for the pictures on a 7-day availability.

(Testimony of Lawrence W. Marriott.)

I hope that covers the dates. I can't remember them all.

Q. Now, do you know anything about the Paradise playing on a 21-day availability—Universal pictures. Do you know anything about that?

A. As I recall, there was one period of time, and I believe that Mr. Lehman at that time—I don't remember whether it was Mr. Lehman at that time or who that was doing [1113] the buying at that time, stated they were going to play pictures on a 21-day availability due to the fact they could get a clear run without bidding.

Now, I am not positive of when the time was.

Q. All right. Now, would you, with respect to bidding, and I am speaking of Universal, would you describe for the court and the jury the theatres that you required the Paradise to bid against to obtain 7-day availability? What were the theatres?

A. The theatres was the Paradise, La Tijera—

Q. Yes? A. —Fox Inglewood.

Q. Yes, Fox Inglewood.

A. United Artists Inglewood.

Q. Yes? A. Ritz Theatre Inglewood.

Q. Ritz, yes. A. Inglewood of Inglewood.

Q. Right. A. Academy, Inglewood.

Q. Just a moment. Academy Theatre Inglewood? A. The Rio, the Southside.

Q. Just a minute. The Rio? A. Yes.

Q. The Southside? [1114]

A. Southside and Fifth Avenue.

Q. And the Fifth Avenue? A. Yes.

(Testimony of Lawrence W. Marriott.)

Q. Those were the theatres——

A. That was the hard-top theatres.

Q. All right. Now, it was not your opinion, was it, that the Paradise was in substantial competition with the Southside Theatre?

A. They still are. I wouldn't say substantial. There is still competition but it is quite a distance from the Paradise. One is on each side of the boundary of the two areas of the Westchester-Inglewood area.

Q. You wouldn't say that they are in substantial competition, that is, the Paradise and the Southside?

A. No, I wouldn't say there is substantial competition.

Q. But the company did require the Paradise to bid against the Southside? A. That is right.

Q. And if the Southside got the picture under the bid, if Paradise had bid under these circumstances, the Southside would have had a right to play the picture ahead of the Paradise?

A. It has prior run, yes.

Q. Now, you required the Paradise to bid against the Academy Theatre? [1115]

A. That is right.

Q. Now, that was the Fox-West Coast Theatre?

A. Yes, sir.

Q. And what was your opinion about substantial competition between those two theatres?

A. I think there was substantial competition.

Q. If the Academy Theatre won the bid under

(Testimony of Lawrence W. Marriott.)

the system you had set up it would get as a matter of right the priority of run over the Paradise, is that correct? A. That is right.

Q. Now, as a matter of fact, your company in 1950, had no policy against licensing a picture to a theatre and then giving clearance over theatres that were not in substantial competition, did it? Do you understand my question? A. I don't.

Q. All right. As far as Universal was concerned, it was all right with Universal if they licensed the picture to one theatre and then gave clearance over another theatre, even though those two theatres were not in substantial competition, isn't that right, in 1950?

A. I still don't understand your question, what you are trying to arrive at.

Q. I am asking, Mr. Marriott, about Universal policy. A. I understand that.

Q. All right. It was agreeable to Universal policy in [1116] 1950 and '51 to license a picture to one theatre and then grant clearance of that theatre over another theatre even though Universal recognized that the two theatres were not in substantial competition. Isn't that right?

A. We done that, yes.

Q. I want to call your attention, Mr. Marriott, to an incident—first let me go back to the period beginning March 26, 1951.

We will offer in evidence as Plaintiff's exhibit next in order, as Plaintiff's Exhibit 15-M, a letter from Lehman to Marriott dated March 26, 1951.

(Testimony of Lawrence W. Marriott.)

The Court: It will be received in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 15-M.) [1117]

* * * * *

Q. (By Mr. Corinblit): Now, do you remember receiving that letter, Mr. Marriott?

A. I imagine so.

Q. Now, subsequently you informed Mr. Lehman that you would not negotiate with him for pictures on a 7-day availability and he would not be able to obtain pictures unless he were to bid against the theatres you have described, isn't that correct?

A. That is right.

The Court: May I ask a question?

Mr. Corinblit: Yes, your Honor.

The Court: How far is the Southside Theatre from the Paradise Theatre, Mr. Westbrook?

Mr. Westbrook: We haven't been able to agree on that, your Honor. We are trying to get the mileage. I think what the trouble is that we have taken different routes— [1119] different routes are involved, but we will come up with a figure.

The Court: Did you consider the Southside Theatre in substantial competition with the Paradise?

Mr. Corinblit: He said "No," I think, your Honor.

The Court: You said "No," didn't you?

The Witness: Well, if I did say no, I was confused in my answers again, because all the theatres, as I stated, they are all competition.

(Testimony of Lawrence W. Marriott.)

The Court: Well, do you consider all these theatres in substantial competition with one and another?

The Witness: In the area?

The Court: In the area.

The Witness: Yes, Inglewood area, the theatres I named.

The Court: Even though Southside is on one side of Inglewood and Paradise is on the other side of Inglewood, you still consider them in substantial competition?

The Witness: I would. [1120] * * * * *

Q. (By Mr. Corinblit): Mr. Marriott, earlier this morning you testified that in your opinion, Universal's opinion, the Paradise and the Southside were in substantial competition, and then at the end of the morning, you stated to the court that you misspoke yourself and you wanted to change your testimony to the effect that it was the opinion of Universal that they were not in substantial competition, is that correct? In other words, your testimony now is that they were in substantial competition, is that right?

A. That they were in substantial competition, yes.

Q. Do you remember, Mr. Marriott, that you gave a deposition [1122] in this case?

A. Yes, sir.

Mr. Corinblit: Is the original on file of the deposition?

Mr. Mitchell: No.

(Testimony of Lawrence W. Marriott.)

Mr. Corinblit: Could we let the witness have a copy so that I can stand at the lectern and use my own copy?

Mr. Johnston: Take mine.

Q. (By Mr. Corinblit): I will place in front of you, Mr. Marriott, a copy of your deposition.

I ask you to turn to page 42 of your deposition—
incidentally, Mr. Marriott, have you read your deposition? A. Yes, sir.

Q. Are there any changes you want to make in it? A. I don't think so.

Q. Now, let me ask you this. In fact, was it the position of Universal as to the matter of substantial competition between the Paradise and the Southside that you treated them as if they were in substantial competition if the Southside asked for clearance over the Paradise, and you treated them as if they weren't in substantial competition if the Southside didn't ask for clearance, is that right?

A. Well, there is really no clearance in this area. This is a priority run.

Q. Have you finished with that answer? [1123]

A. That's right.

Q. Would you answer my question, whether or not it is a fact that in 1950 and 1951, if the Southside asked for clearance over the Paradise, Universal would treat them as being in substantial competition. If Southside didn't ask for clearance, they would not treat them as being in substantial competition. Is that right?

(Testimony of Lawrence W. Marriott.)

A. They would still have the prior run.

The Court: Well, you know what substantial competition is?

The Witness: Yes.

The Court: Did you consider these two theatres in substantial competition?

The Witness: Yes, sir.

The Court: Regardless of whether it came from Southside to Paradise or Paradise to Southside, they were still in substantial competition.

The Witness: Correct.

Q. (By Mr. Corinblit): The same thing is true with respect to the Academy? A. Correct.

Q. Well, now, I ask you to look at page 42 of your deposition, line 6, and the answer at line 9.

“Q. Mr. Marriott, was it the position of Universal in 1950 and 1951 that the Paradise [1124] Theatre was in substantial competition with the Southside Theatre?

“A. It all depended on the bidding. If the Southside would request clearance over all bidders, they would be granted that.

“Q. In other words, if the Southside would request clearance over the Paradise, as a result of that request you would treat those theatres as being in substantial competition with each other?

“A. And the same opportunity would be given to the Paradise if he bid on the picture and asked for clearance over the Southside.

“Q. And if the Southside did not request clear-

(Testimony of Lawrence W. Marriott.)

ance over the Paradise, then Universal would not treat the two theatres as being in substantial competition with each other, is that right?

“A. That is true.”

Now, were you asked those questions and did you give those answers?

A. What was the last part?

Q. Were you asked those questions and did you give those answers? A. I am sure I did.

Q. Were your answers true at the time?

A. They were true in the way that I maybe understood [1125] it, but, as I stated before—as I have stated now, the theatres that you ask questions, the Paradise, Southside, Academy, and so forth, they are all in competition. [1126]

Q. But you said in this deposition, Mr. Marriott, that if the Southside did not request clearance then Universal would not treat the two theatres as being in substantial competition. That is what you said? A. Yes, sir.

Q. Now, was that answer true?

A. It is a matter of understanding the interpretation.

The Court: You can answer the question yes or no and then you may explain your answer. The question was, was it true.

The Witness: I don't know how to answer. I presume I would have to say yes.

The Court: All right. Now you may explain your answer if you care to.

(Testimony of Lawrence W. Marriott.)

The Witness: If a picture was awarded to the Southside on a negotiated deal or a bid for the 7-day availability, and if there was no request made that they play ahead of any theatre, then we were at liberty to negotiate another deal with some other theatre in the same area to play with this theatre.

Q. (By Mr. Corinblit): And it was perfectly all right with Universal to play day and date between the Southside and the Paradise so far as Universal was concerned? A. That is true.

Q. Now, turning to the Academy Theatre. If the [1127] Academy didn't ask for clearance you would treat the theatres as not being in substantial competition, is that right?

A. No, sir, I didn't say that. I didn't mean that if I said that.

Q. Look at page 43. A. All right.

Q. Of your deposition. Look at the question on line 4 and the answer on line 6.

A. All right.

Q. Now, were you asked this question:

"Q. If they didn't ask—referring to the Academy—"If they didn't ask for clearance you would treat the two theatres as not being in substantial competition. "A. That is right."

Mr. Mitchell: Read the next question and the next answer.

Mr. Corinblit: "Q. Did you have any idea what the words 'substantial competition' meant in '50, '51?

(Testimony of Lawrence W. Marriott.)

"A. Well, all theatres were in competition to one another. A picture played in the Southside and played in the Paradise, it could affect the grosses in both theatres.

"Q. Did you have an opinion as to how [1128] much the Southside's business would be affected if played day and date with the Paradise?

"A. No.

"Q. Did you have an opinion as to how much the Academy's business would be affected if it played day and date with the Paradise?

"A. No.

"Q. Did you have any opinion as to how much the business of the Fifth Avenue would be affected if it played day and date with the Paradise?

"A. No.

"Q. Did you have an opinion as to how much the business of the La Tijera would be affected if it played day and date with the Paradise?

"A. No.

"Q. Now, in your opinion, could the effect on the Southside have been as little as 1 per cent?

"A. I wouldn't give any amount. I don't know.

"Q. You didn't know at that time?

"A. No." [1129]

Q. Now, Mr. Marriott, were you asked those questions and did you give those answers?

A. That is right.

Q. And were all those answers true?

A. As I understood it at the time, yes.

(Testimony of Lawrence W. Marriott.)

The Court: I would like to go back and ask this witness a question that I asked this morning.

In 1950 and 1951 what did you base, what yardstick did you use to determine whether theatres were in substantial competition?

A. Well, in the Los Angeles area—in the Inglewood-Westchester area——

The Court: Any area. I don't care what area you take, what was your yardstick?

The Witness: Well, I am afraid that it is different in some areas in the manner in which it is set up.

The Court: Let us take a community in which there are four or five different theatres.

The Witness: Yes, sir.

The Court: And they are distant 1 to 10 miles. Do you base your definition of substantial competition on mileage?

The Witness: In 1950 and '51 I don't think we used mileage. In fact I am sure we didn't use mileage.

The Court: Then what did you use?

The Witness: We used a community—the best that I know [1130] how to explain it is the Inglewood-Westchester community. In other words, the theatres all in that same area must draw the people from—the biggest majority of them from the boundaries of that area, which the boundaries of that area are pretty large in my opinion.

The Court: Then you would say because these

(Testimony of Lawrence W. Marriott.)

theatres were in that particular area they had to be in substantial competition?

The Witness: I would say that is how it was set up.

Q. (By Mr. Corinblit): Now in your deposition, Mr. Marriott, you said that you couldn't give any amounts as to how much one theatre would affect another? A. That is correct.

Q. You don't know whether it is 50 cents—you didn't know whether it was 50 cents or \$50?

A. I still don't know.

Q. Now, it was on the basis of the fact of this statement to the Paradise Theatre that they were in substantial competition as you have testified about today, that the Paradise was refused the privilege of playing day and date with the Academy. Isn't that right—isn't that the reason?

A. No, that wasn't the reason. As I stated on the prior run, which is 7-day availability, the picture was awarded to the Academy Theatre and if the Paradise Theatre was in dire need of a picture to play, whether the Paradise or what other theatre it might have been in the same area, if they had asked us if they could play on this same one, which was a 7-day, and if it run—and if the theatre who had bought the picture first they had agreed that it was okay we negotiated a deal for the other theatre.

Q. Well, now, you don't have any doubt, do you, that during the 1950 and 1951 period the Paradise was in dire need of 7 day pictures?

(Testimony of Lawrence W. Marriott.)

A. I don't know whether it was or not. If it was, he had the opportunity to bid for them. He didn't close his theatre. It still operated.

Q. Without regard to the question of bidding, just from the point of view of dire need, you know that the Paradise was in dire need of 7 day pictures during that period?

A. All I can say, Mr. Cornbloom, if he had bid the highest bid for the pictures, he would have been awarded the pictures.

Q. Can't you answer my question as to whether or not you knew that the Paradise was in dire need of 7 day pictures?

A. The only way I can answer that question is, I don't think he was in any more dire need than other theatres in the area, because it takes quite a few pictures to service that many theatres in the area.

Q. And he didn't get any from your company other than the one in the first month, did he?

A. He probably didn't see fit to bid the proper terms.

Q. Now, finally, actually in that area in 1950-1951, you did not make any studies of that area to decide the question of substantial competition, did you?

A. I did not make any study myself. I believe, as the [1133] record shows, there was correspondence with Mr. Landau, and Mr. Foster Blake is also my superior, and naturally policies he set up.

(Testimony of Lawrence W. Marriott.)

Q. Do I understand it was Universal's position in 1950-1951, that if the Academy Theatre would have granted permission, Universal was willing to permit the Paradise Theatre to play day and date with the Academy?

Mr. Mitchell: You mean on the pictures where the Academy won the bid?

Mr. Corinblit: Yes, on the pictures where they licensed the pictures on 7 day availability.

The Witness: You confused me in the theatre you mentioned first.

Q. (By Mr. Corinblit): Was it the position of Universal that if the Academy licensed a picture on a 7 day availability and was willing to permit Universal to license to the Paradise a day and date availability, that that was agreeable with Universal?

A. Yes, sir.

Q. In fact, in this case the Academy Theatre, owned by Fox West Coast, was unwilling to do that, is that correct?

A. I don't recall that they ever did play with them.

Q. You know that they said that they would not?

A. I think that is true.

Q. Now, when you said that if the Academy said all [1134] right, Universal would have been willing to play day and date—to permit day and date between the Academy and the Paradise, isn't it your opinion then that the two theatres were not in substantial competition with each other?

(Testimony of Lawrence W. Marriott.)

A. No, sir.

Q. Mr. Marriott, I want to call your attention to an incident occurring in April of 1951——

Mr. Corinblit: I will offer in evidence at this time a letter, Lehman to Marriott, Plaintiff's Exhibit 15-R.

The Court: It may be received in evidence.

The Clerk: 15-R.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 15-R.) [1135]

* * * * *

Mr. Mitchell: When you read that, Mr. Corinblit, you read it as stating he was anxious to negotiate the picture Up Front, which may give a wrong impression. What you are talking about is that he wants to play the picture entitled Up Front.

Mr. Corinblit: Yes, to play the picture entitled Up Front.

The Court: That is the name of the picture?

Mr. Corinblit: Yes, sir.

The Court: I was going to ask what that meant.

Q. (By Mr. Corinblit): Now, you knew when you got that letter, Mr. Marriott, if you hadn't known before that, that the Paradise was in dire need of 7 day pictures, didn't you?

A. According to the letter, he must have needed some.

Q. All right. Subsequently, on or about May 2, you had a conversation with Mr. Lehman, did you

(Testimony of Lawrence W. Marriott.)

not, in which you told him that the Academy Theatre had won the picture, that it was agreeable to you to permit the Paradise to play day and [1136] date if the Paradise could get permission from Fox West Coast.

Did you have that conversation? Did you make those statements to Mr. Lehman?

A. I think that's right.

Q. Did Mr. Lehman subsequently tell you that he had called Fox West Coast and asked them for permission and they had said no?

A. He no doubt did.

Q. In fact, during this period, Mr. Marriott, it was not Universal, but it was the defendant Fox West Coast who was deciding whether or not the Paradise could play on the 7 day availability, isn't that right?

The Court: That is when Fox had the picture, then Fox made the determination.

The Witness: That's right.

Mr. Mitchell: Fox determined whether to waive its right to prior availability is all there is to it. They bought a prior availability and they could waive the right if they wanted to.

Q. (By Mr. Corinblit): Take the court's question first, when Fox had the picture, Fox was the company that decided whether or not the Paradise would play that picture day and date?

A. Whether it had been Fox or any theatre that received it, it would be the same answer, yes. [1137]

(Testimony of Lawrence W. Marriott.)

Q. The answer is "Yes"? A. Yes.

Q. As a matter of fact, whether or not Fox got the picture, Fox was the company that decided whether or not Universal was going to permit the Paradise to play day and date, isn't that right?

A. On that one picture that they had been awarded, yes.

Q. Whether or not they were awarded the picture, you were doing what Fox wanted you to do, not what Universal wanted to do, isn't that right?

A. No, I can't say that, because there was pictures that the Academy had played on the same prior run availability with.

Q. You say there were pictures at the Academy that played day and date with the Paradise?

A. I didn't say the Paradise. I said the other theatres.

Q. The other theatres? A. Yes, sir.

Q. But I am talking about the Paradise, whether or not the Academy got the picture, it was Fox West Coast that was telling Universal whether or not the Paradise would be permitted to play day and date with the Academy.

Mr. Mitchell: Objected to as having been asked and answered. [1138]

The Court: Overruled. He hasn't answered. He answered a question, but he did not answer that question.

Mr. Mitchell: I think he answered it.

The Witness: Would you repeat it?

(Testimony of Lawrence W. Marriott.)

The Court: Read the question.

(Question read.)

The Witness: If that is the way you want to look at it, yes.

Mr. Corinblit: No further questions. [1139]

Cross Examination

Q. (By Mr. Mitchell): When you offered pictures after you started bidding again in 1950, how many 7-day runs did you offer on the bid?

A. One.

The Court: Are you talking about this particular area?

Mr. Mitchell: Yes, in this area, in this Inglewood-Westchester area.

Q. (By Mr. Mitchell): You offered one picture 7-day run on a bid? A. Right.

Q. And then what priority of availability did you give to the winning theatre?

A. He had no priority to the one that had the priority and the next availability was 14 days.

Q. I understand, but the one that won the bid over what theatres did he have the right to prevent others playing——

A. All of them in that area.

Q. You mean if the Paradise won the bid then if he wanted to he could prevent the La Tijera, the Fox Inglewood, the Fifth Avenue, the Academy, the Southside, from playing day and date?

A. That is true.

(Testimony of Lawrence W. Marriott.)

Q. Or he could upon request waive that right?

A. That is right. [1140]

Q. Now, was that a right that was special for Fox West Coast or did others have it?

A. Everyone had the same right.

Q. Marco Wolff running the Southside, he had it?

A. He had the same right.

Q. Marco Wolff running the Paradise, did he have it?

A. The same right.

Q. United Artists running the United Artists Theatre if it won the bid it had the same right?

A. Same right.

Q. And Fox West Coast running the Fifth Avenue, the Academy and the Fox Inglewood had the same right?

A. Had the same right.

Q. All right. Now, suppose that Marco Wolff at the Southside won the bid, giving him the priority of run——

A. Yes, sir.

Q. Would you consult Fox West Coast as to whether you could sell another run in the area?

A. Certainly not.

Q. Would you consult Marco Wolff as to whether you could sell another run in the area?

A. If someone had asked if they could play the picture on the same date then we would have to receive the permission from Marco Wolff.

Q. If United Artists Theatre had won the bid it then [1141] got priority of run over all the other theatres in that area?

A. That is right.

Q. If you wanted to sell a day and date run to

(Testimony of Lawrence W. Marriott.)

another theatre, say, the Paradise or the Southside, would you consult Fox West Coast?

A. I would consult United Artists who had won the bid.

Q. If the La Tijera, Mr. Kupper's theatre, won the bid would you give him a priority of run over the Paradise and the Southside and the Fox West Coast Theatres? A. Everyone.

Q. What if you wanted to try to sell another run in the area, say to the Southside?

A. Then we would have to consult Mr. Kupper.

Q. Would you consult Fox-West Coast?

A. No.

Q. You made a statement to Mr. Corinblit that might be interpreted as meaning whenever you wanted to play a second run in the area you go ask Fox-West Coast.

A. Only if Fox-West Coast had won the picture.

Q. Now, you say that when this gentleman that went through your files out there destroying records—you say he left some of them?

A. That is true.

Q. Among some of the records that he left for you did he [1142] leave the contract record with respect to the Inglewood-Westchester area?

A. My understanding is that most all the contracts were left intact.

Q. All right. Now, I have handed you a file there of contracts, starting back in September, 1949.

A. Yes, sir.

Q. At this time you have testified that Universal

(Testimony of Lawrence W. Marriott.)

was not offering their pictures for bid but was negotiating with all of the theatres in the area to see which one would give you the most money for your pictures? A. That is right.

Q. Is there anything—let us take the first contract, Johnnie Stool Pigeon and Abbott and Costello Meet The Killer. They were apparently sold together. A. Yes, sir.

Q. Is there anything there that indicates to what theatres that picture was sold?

A. Yes. The picture was sold to the La Tijera and Imperial Theatres on 7-day availability.

Q. Is there anything that indicates whether or not it was sold on a bid?

A. I am satisfied that——

The Court: That is not the question. The question is, is there anything there to indicate that.

The Witness: All right, yes.

Q. (By Mr. Mitchell): What indication is there?

A. The indication is when a picture, whether this picture or any other picture, is awarded on a bid the terms prevail—no adjustment can be made.

In looking at this I see that there is a form which we call A.E. 97 whereby the terms were changed from the original terms in this deal.

Mr. Corinblit: I will object to that and move to strike the answer as being non-responsive to the question.

The witness testified clearly now that there was no bidding at this time and this is simply conclu-

(Testimony of Lawrence W. Marriott.)

sions in his own mind. I think it is non-responsive to the question.

The Court: He says there is some indication and he has the right to point out the indication.

Mr. Mitchell: He agrees there was no bidding at this time.

The Witness: No bidding.

Q. (By Mr. Mitchell): And these pictures were awarded by negotiation? A. That is true.

Q. Then the next picture in September, 1949?

A. Yes.

Q. The name of the picture is, Yes, That's My Baby. A. Yes, sir. [1144]

Q. To what theatres were those pictures awarded?

A. Yes, Sir, That's My Baby was also sold to the Imperial and La Tijera.

Q. All right. The next picture is Blue Lagoon. To what theatres was that licensed?

A. Blue Lagoon was sold to the La Tijera.

Q. And the Imperial also?

A. I don't believe so—wait a minute. I couldn't say, Mr. Mitchell, because there is no La Tijera contract here.

Q. You mean there is no La Tijera contract?

A. No La Tijera contract. There is an Imperial contract which on the recommendation for the Imperial contract referred to the La Tijera contract—recommend of the same date.

Q. That indicated that the La Tijera was also sold?

(Testimony of Lawrence W. Marriott.)

A. That would indicate that the picture was sold to the La Tijera and Imperial.

Q. All right. Now, the next picture is Arctic Manhunt. The contract is dated October 19, 1949. To what theatre was that picture licensed?

A. The picture was licensed to the Academy Theatre on the 7-day availability.

Q. All right. Let us take the next one, Sword in the Desert. [1145] A. Yes, sir.

Q. Contract dated October 24, 1941. To what theatre was that contract licensed—theatre licensed?

A. That was sold to the Southside and the Academy.

Q. All right. The next picture is The Gal Who Took the West. The contract is dated October 27, 1949. To what theatre was that picture sold?

A. Again there is only one contract for the Imperial Theatre. Nothing for the La Tijera but the recommendation states refer to the La Tijera which would lead me to believe that the picture played both theatres, the La Tijera and Imperial. [1146]

Q. All right. Then the next picture, by contract dated November 10, 1949, is Abandoned Woman. To what theatre was that picture licensed?

A. That picture was sold to the Fox Theatre.

Q. The next picture is Christopher Columbus, by contract dated November 19, 1949. To what theatre was that picture licensed?

A. United Artists Theatre in Inglewood.

Q. And the next picture is the Story of Molly X,

(Testimony of Lawrence W. Marriott.)

by contract dated December 1, 1949. To what theatre was that licensed?

A. That was licensed to United Artists Theatre.

Q. The next picture is entitled Bagdad, by contract dated January 6, 1950. To what theatre was that picture licensed, or theatres?

A. Imperial and La Tijera.

Q. The next picture is entitled Undertow, by contract dated January 19, 1950. To what theatre was that picture licensed?

A. To the Academy Theatre.

Q. The next picture is entitled South Sea Sinner, by contract dated January 30, 1950. To what theatres was that picture licensed?

A. South Sea Sinner, La Tijera and Imperial Theatres on the 7 day availability. [1147]

Q. The next picture is entitled Free For All, by contract dated January 8, 1950. To what theatres was that picture licensed?

A. To the Imperial Theatre.

Q. How about the La Tijera?

A. I don't believe so. Nothing to indicate that it was.

Q. The next picture is Woman in Hiding, by contract dated February 8, 1950. To what theatre or theatres was that licensed?

A. Imperial and La Tijera.

Q. Both those theatres were operated by Bill Kupper?

A. That is correct.

Q. The next picture is The Rugged O'Riordans,

(Testimony of Lawrence W. Marriott.)

by contract dated February 10, 1950. To what theatre or theatres was that licensed?

A. The Academy Theatre, Inglewood.

Q. The next picture is *Borderline*, by contract dated February 21, 1950. To what theatre was that sold?

A. *Borderline* was sold to the United Artists and the La Tijera.

Q. The next picture is entitled *Francis*, by contract dated March 13, 1950. To what theatres was that sold?

A. It was sold to the Academy Theatre and the Southside.

Q. The next picture is *Outside the Wall*, by contract [1148] dated March 24, 1950. To what theatres was that picture sold?

A. The picture was sold to the Imperial and La Tijera.

Q. Now, the next picture is *One Way Street*, by contract dated May 1, 1950. To what theatres was that picture licensed?

A. I don't have that.

Q. Here they are. I will take the others away so you won't get them mixed up.

A. *One Way Street* was sold to the La Tijera and Imperial.

Q. Still by negotiations?

A. That's right.

Q. The next picture, *I Was a Shoplifter*, by contract dated May 12, 1950. To what theatre was that picture licensed?

A. That was sold to the Academy Theatre.

Q. The next picture is entitled *Tight Little*

(Testimony of Lawrence W. Marriott.)

Island, by contract dated May 29, 1950. To what theatre? A. Sold to the La Tijera.

Q. All right. Now, the next picture is Comanche Territory, by contract dated May 29, 1950. I would like you to look at that and tell me whether or not there is some indication on that as to how you licensed that picture?

A. In my recommendation on the contract, which is information that was taken off the bid data——

Q. Just what does it say? Read it.

A. It says "Bid first run Inglewood, Comanche Territory, awarded to the La Tijera Theatre by Mr. Blake, phone May 18, 1950. Refer to bid data on same date."

Q. Does that indicate how you licensed that picture?

A. Yes, sir. It was awarded on bidding.

Q. That is the first picture of those we have gone over on which you had bidding?

A. That's right.

Q. This was long before there was any Paradise? A. That's right.

Q. The next picture is Sierra, by contract dated June 6, 1950. Will you tell me what your records show with respect to that picture?

A. My records show that——

Q. Just read it.

A. "All bids Sierra first run Inglewood rejected. Negotiated deal with the Fifth Avenue for 7 days scale with a minimum of 30 per cent. Deal dis-

(Testimony of Lawrence W. Marriott.)

cussed with Mr. Rose before approving. Refer to bid data June 5, 1950."

Q. The next picture is *Spy Hunt*, by contract dated June 8, 1950. What does your record show? Just read it.

A. "Bid first run *Inglewood Spy Hunt*, awarded to Academy Theatre by Mr. Rose, phone June 8. Refer to bid data June 7, 1950." [1150]

Q. You are still bidding? A. Yes, sir.

Q. The next picture is *Peggy*, by contract dated June 21, 1950. Tell me what your record shows on that picture.

A. "First run bids *Inglewood Peggy* awarded to Imperial Theatre by Mr. Blake, June 20, 1950. Refer to bid data on same date."

Q. Does it show any other theatre also playing that picture on the 7 day availability?

A. Yes, sir. It also was sold on the same availability to the La Tijera, and the recommendation reads: "Bid first run *Inglewood on Peggy*, was awarded to the Imperial Theatre. Mr. Kupper will play the picture day and date in the La Tijera. Negotiated a deal with him securing 35 per cent."

Q. This is one of those instances where you got somebody else's permission?

A. Where I got the permission of Mr. Kupper.

Q. The very same man who had the other run?

A. Yes.

Q. The next picture, *Curtain Call at Cactus Creek*, by contract July 5, 1950. What do your records show?

(Testimony of Lawrence W. Marriott.)

A. The record states "Bid first run Inglewood, Curtain Call at Cactus Creek, awarded to La Tijera Theatre by Mr. Rose, July 5, 1950. Refer to the bid data July 3, 1950."

Q. Does it also show that the Imperial played day and [1151] date?

A. Yes, sir, and the recommendation is, "Imperial first run bid Inglewood, Curtain Call at Cactus Creek was awarded to La Tijera Theatre, and negotiated deal with the Imperial to play day and date."

Q. All right. The next picture is Winchester .73, by contract dated July 27, 1950.

A. It says "Bids awarded to the Academy Theatre Inglewood by Mr. Rose, July 20, 1950. Refer to bid data the same date."

Q. Does it show any other theatre playing the picture day and date?

A. Yes, sir. It played the Southside Theatre and the recommendation states "Sold Winchester .73 at 35 per cent, same terms as Francis."

Q. Is this one of those instances where you were able to get the agreement of Fox West Coast to permit another theatre to play day and date?

A. That is true.

Q. That is, they waived their priority of run?

A. That is true.

Q. The next picture is Adam and Evalyn, by contract dated August 8, 1950. What does your record show?

A. The record shows that this picture was sold to the Academy, "Sold Adam and Evalyn to the

(Testimony of Lawrence W. Marriott.)

Academy Theatre 7 days, [1152] \$400, and will be used as a second feature. We previously sold *One Woman's Story* 7 days, \$300.

Q. The next picture is *Foreign Legion*, by contract dated August 11, 1950. What do your records show?

A. The records state "Bid for the 7 day availability Inglewood, Abbott and Costello in *Foreign Legion*, was awarded to the Academy Theatre by Mr. Rose August 3, 1950. However, after picture had been awarded, Mr. Kupper of the La Tijera Theatre talked with Fox West Coast and informed them that he had no picture to book on this availability, and they in turn agreed to give him this picture at the same terms the picture was awarded to them."

Q. So what theatre played the picture?

A. The picture played the La Tijera.

Q. The next picture *Astonished Heart*, by contract dated August 24, 1950.

By this time the *Paradise* is coming into being. What do your records show?

A. My record shows on the recommendation, "Booked *Astonished Heart* to play first run Inglewood at established percentage sliding scale."

Q. At what theatre?

A. At the Fifth Avenue.

Q. Does it show anything about bids or no bids?

A. It doesn't show that, and it happens to be that [1153] *The Astonished Heart* was one of our J. Arthur Rank English pictures, which most thea-

(Testimony of Lawrence W. Marriott.)

tres tried to evade and not play. Mr. Rank doesn't like that, either. So in a case like that, I presume I would say 99 per cent I am right that there was no bid, so we negotiated a deal for the best we could and we accepted the Fifth Avenue.

Q. The next picture is Desert Hawk, a contract dated August 25, 1950. What does your record show about Desert Hawk?

A. Recommendation states, "Bid first run Inglewood Desert Hawk awarded to the Paradise Theatre by Mr. Blake over the phone, August 24, 1950. We accept a percentage in lieu of the flat rental. Refer to bid data August 24, 1950."

Q. Was that picture licensed to any other theatre?

A. It was also licensed to the Imperial Theatre.

Q. What does your record show?

A. The record shows "Desert Hawk was awarded to the Paradise Theatre first run Inglewood, and on the Paradise bid they only requested clearance over the Loyola and La Tijera Theatres, and these were the only two theatres they requested clearance over. I negotiated a deal with the Imperial Theatre securing \$1,250 for 7 days."

Q. This was at a time when Marco Wolff did some bidding for the Paradise, right?

A. I am satisfied—yes, that is true. [1154]

Q. This is in August 1950?

A. He signed the contract.

Q. Marco did?

A. Marco signed the contract.

(Testimony of Lawrence W. Marriott.)

Q. The next picture is Louisa, by contract dated September 7, 1950. What do your records show?

A. "Louisa, bid for first run Inglewood on Louisa awarded to the Imperial Theatre by Mr. Blake over the phone September 7, 1950. Refer to bid data from same date."

The picture also played the La Tijera and the bid data states, the recommendation states, "First run bids to Louisa for Inglewood was awarded to the Imperial Theatre. Negotiated a deal with the La Tijera Theatre to play day and date with the Imperial." [1155]

Q. All right. The next picture is Saddle Tramp by contract dated September 21, 1950. What do your records show?

A. Saddle Tramp. The recommendation states: "Bid first run Inglewood. Saddle Tramp awarded the Academy Theatre by Mr. Rose over the phone September 21, 1950. Refer to bid data dated September 20, 1950."

Mr. Corinblit: May I have the dates again, please?

The Witness: Awarded by Mr. Rose over the phone September 21, 1950. Refer to bid data September 20th.

Q. (By Mr. Mitchell): All right. The next picture is Shakedown by contract dated October 2, 1950.

A. Shakedown. The recommendation states: "First run bid Inglewood. Shakedown awarded to the La Tijera Theatre, Los Angeles, by Mr. Rose

(Testimony of Lawrence W. Marriott.)

September 29, 1950. Refer to bid data dated September 28, 1950."

Q. All right. Does the La Tijera Theatre—did the La Tijera Theatre let another theatre play day and date?

A. It played it day and date with the Imperial. The recommendation states: "We awarded bid—" I am sorry, this is another recommendation. I will check it.

There must be a typographical error. The recommendation states:

"We awarded bid for the 14-day availability Inglewood [1156] on Shakedown to La Tijera Theatre. Negotiated deal with the Imperial to play day and date securing 40 per cent."

So I am satisfied that it is a typographical error. The 14 should be a 7.

Q. When you say "14-day availability," you licensed on bid one 7-day availability?

A. That is right.

Q. And where you could you negotiated a second 7-day availability?

A. That is correct.

Q. Did you also license a 14-day availability?

A. That is true.

Q. How many?

A. Oh, 14—my recollection it was one—it would be two. I think it is one.

Q. So if the 7-day availability played for 7 days the 14 would just continue on without clearance?

A. Immediately following.

Q. In these contracts with respect to the 7-day

(Testimony of Lawrence W. Marriott.)

availability, was there any provision for clearance?

A. Just priority.

Q. A prior run? A. That is right.

Q. No lapse of time? [1157]

A. No lapse of time between the 7 and the next run.

Q. All right. The next picture is Rocking Horse Winner. The contract is dated October 3, 1950. To what theatre was that awarded? What do your records show?

A. I have to smile when I read this one.

Well, originally Fox intended to play Rocking Horse Winner for a week. The picture opened so poorly that it was discontinued after the first day. We agreed to accept \$100 for the one day booking, which was the same rental as accepted for Astonished Heart which played five days first run in Inglewood in the Fifth Avenue Theatre.

Q. All right. The next picture is Sleeping City by contract dated October 15, 1950. What do your records show?

A. The recommendation states: "Bid first run Inglewood. Sleeping City awarded to the Imperial Theatre by Mr. Rose over the phone October 5, 1950. Refer to bid data October 4."

Mr. Corinblit: What theatre was that awarded to?

The Witness: Imperial. It also played the La Tijera which recommendation reads: "Bids for Sleeping City 7-day availability awarded to the Imperial Theatre Inglewood. Sold day and date run in

(Testimony of Lawrence W. Marriott.)

the La Tijera Theatre 7 days. \$600'' which is the same rental as the Imperial Theatre.

Q. (By Mr. Mitchell): All right. The next picture is [1158] Wyoming Mail by contract dated October 27, 1950. What do your records show?

A. The recommendation states:

"Bid first run Inglewood 7-day availability. Wyoming Mail awarded to the Fox Theatre by Mr. Rose over the phone October 25, 1950. Refer to bid data October 24, 1950."

Q. That is the Fox Theatre in downtown Inglewood? A. That is right.

Q. That is the one that Fox West Coast redecorated or reconstructed?

A. The Fox Theatre in——

Q. Inglewood.

A. Inglewood. That was formerly known as the old Granada Theatre, which was destroyed by fire and the Fox Theatre was a new theatre built from the ground up.

Q. All right. The next picture is Woman on the Run by contract dated November 2, 1950.

A. Woman on the Run. The recommendation states: "I awarded bid of Woman on the Run for the 7-day availability Inglewood to the Academy Theatre November 2, 1950. Refer to bid data of same day."

And the picture also played in the Southside. The contract recommendation states:

"Bid first run Inglewood for Woman on the Run awarded [1159] to the Academy Theatre. Fox West

(Testimony of Lawrence W. Marriott.)

Coast did not request clearance over the Southside Theatre and Mr. Marriott was able to negotiate a deal with the Southside Theatre to play for a day and date run 7 days, \$400." It happens to be this recommendation was signed by Foster Blake. I no doubt was on a vacation or away from the office.

The Court: The word "vacation" suggests that we should take a recess at this time.

Ladies and gentlemen, we are about to take another recess and again it is my duty to admonish you that you are not to discuss this case with anyone; you are not to permit anyone to discuss it to you and you are not to formulate or express any opinion as to the rights of the parties in this case until it is finally submitted to you.

With that admonition we will now recess for 15 minutes.

(Short recess.) [1160]

The Court: Is it stipulated the jury is present in the box?

Mr. Johnston: Yes, your Honor.

Mr. Corinblit: So stipulated.

Mr. Mitchell: I think maybe we can shorten this somewhat, your Honor. It gets pretty tedious going through these contract by contract. So I will show Mr. Marriott a compilation taken from the contract files and the cut-off cards of Universal, and ask Mr. Marriott if you have yourself checked that as to correctness.

The Witness: I have.

Q. (By Mr. Mitchell): Does that correctly show

(Testimony of Lawrence W. Marriott.)

the various pictures were awarded or negotiated as shown by the records of Universal? A. Yes.

Mr. Corinblit: Just a minute. Counsel, is this information all taken from the records that are here?

Mr. Mitchell: Yes, the cut-off cards and the contracts.

Mr. Corinblit: The cut-off cards and the contracts?

Mr. Mitchell: Yes.

Mr. Corinblit: The fact as to whether a picture was awarded by bidding or negotiated would come, then, from the records or from the cut-off cards, too? [1161]

Mr. Mitchell: That would come from the contract records.

Mr. Corinblit: The contract records?

Mr. Mitchell: Yes.

The Witness: The contract records.

Mr. Mitchell: I don't believe that shows on the cut-off cards, does it?

The Witness: No.

Mr. Mitchell: Mr. Corinblit, answering your question, there are a few instances where a day and date run did not show in the contract material, but where it showed up on the cut-off cards as having played along with a bid picture, so we put in the word negotiated, because obviously it was not bid. It was negotiated day and date.

Mr. Corinblit: Yes.

Mr. Mitchell: I will offer the document which the witness has just identified.

(Testimony of Lawrence W. Marriott.)

Mr. Corinblit: No objection, your Honor.

The Court: It may be received in evidence.

The Clerk: Is that Universal's exhibit, Mr. Mitchell?

Mr. Mitchell: Yes, it is. I'm sorry.

Mr. Corinblit: What number will that be?

The Clerk: Is this a new number?

Mr. Mitchell: It is a new number. [1162]

The Clerk: Universal G-1.

(The exhibit referred to was received in evidence and marked as Universal's Exhibit G-1.)

Mr. Mitchell: I think, if I may, your Honor, I can read what is on here faster than doing it by question and answer, if that is satisfactory to you, to read the exhibit to the jury.

We had proceeded as far as November 2, 1950, with the picture *Woman on the Run*, and I will read these pictures rapidly just for the purpose of indicating to you how they were licensed and to what theatres. [1163]

Q. (By Mr. Mitchell): Deported. November 15, 1950. Academy on bid. Southside negotiated.

Kansas Raider. November 26, 1950. La Tijera on bid. Imperial negotiated.

The Milkman. November 30, 1956—I mean 1950. That is a clerical error in the exhibit. Both pictures negotiated, one to the La Tijera—I mean the picture negotiated to two theatres, one to the La Tijera and one to the Imperial.

Maybe you had better look at that contract. Is there any explanation why those pictures were nego-

(Testimony of Lawrence W. Marriott.)

tiated rather than bid? A. What is the title?

Q. The Milkman, November 30th. I think I have it here.

(Handing document to the witness.)

A. The Milkman: The contract recommendation states: "Refer to the Imperial Theatre Inglewood contract recommendation of same date."

Q. That seems to be missing?

A. It seems to be missing.

Q. All right. The next picture Undercover Girl by contract dated December 18, 1950. La Tijera awarded by bidding.

Mystery Sub by contract dated December 22, 1950. United Artists. All bids rejected and negotiated also to [1164] Imperial negotiated.

The next picture is Frenchie by contract December 28, 1950. All bids rejected. Negotiated to La Tijera and the Imperial.

The next picture is Harvey by contract dated February 1, 1951. Academy awarded by bidding. Southside negotiated.

The next picture Under the Gun by contract dated February 20, 1951. No bids received. Negotiated to La Tijera, Imperial and United Artists Theatre.

Operation Disaster by contract dated February 23, 1951. No bids received. Negotiated to the Fifth Avenue.

Tomahawk by contract dated March 2, 1951. Academy awarded by bidding.

Bedtime For Bonzo by contract dated March 27,

(Testimony of Lawrence W. Marriott.)

1951. No bids received. Awarded to the Academy by negotiation.

Target Unknown by contract dated April 2, 1951. Academy awarded by bidding. Southside negotiated.

Meet the Invisible Man by contract dated April 6, 1951. United Artists awarded by bidding.

The Groom Wore Spurs by contract dated April 20, 1951. Academy awarded by bidding. Southside negotiated.

Up Front by contract dated April 27, 1951. Academy awarded by bidding.

Ma & Pa Kettle Back on the Farm by contract dated May 11, 1951. No bids received. Negotiated to the La Tijera. [1165]

Now, I would like you, Mr. Marriott, to examine the contract data on that picture and read to the jury what your record shows with respect thereto.

A. Ma & Pa Kettle—we did not receive any bids first run Inglewood 7-day availability. Ma & Pa Kettle Back on the Farm negotiated a deal with all theatres in this area. [1166]

Q. (By Mr. Mitchell): When you say that, you mean tried to negotiate a deal?

A. Tried to negotiate a deal. In other words, I contacted all and all were booked on this availability.

Q. All were booked on this availability?

A. With the exception of the Paradise and La Tijera Theatre. Our best offer from the Paradise Theatre was \$500 against 35 per cent, less second

(Testimony of Lawrence W. Marriott.)

feature. Our offer in the La Tijera Theatre was \$630 against 35 per cent, less second feature. We accepted the latter. "Refer to bid data dated May 4, 1951."

Q. That was an occasion when you negotiated with the La Tijera and the Paradise?

A. That is true.

Mr. Mitchell: The next picture shown on Exhibit Universal G-1 is "Double Crossbones, by contract dated May 15, 1951, Fifth Avenue (awarded by bidding.) La Tijera (negotiated)."

The next one is Air Cadet, "by contract dated May 18, 1951, Academy (awarded by bidding)."

The next one is Smuggler's Island, "contract dated May 25, 1951, all bids rejected. Negotiated with United Artists and La Tijera. Pictures awarded by negotiation."

Fat Man, "by contract dated June 4, 1951, La Tijera awarded by bid. Southside negotiated."

Katie Did It, La Tijera, awarded by bid. Southside negotiated.

Apache Drums, June 22, 1951, Academy, awarded by bid. Southside negotiated.

Hollywood Story, June 22, 1951, Academy, awarded by bid.

Prince Who Was a Thief, July 3, 1951, La Tijera awarded by bidding, Fifth Avenue awarded by bidding.

Q. (By Mr. Mitchell): I will ask you to look at your contract record on that picture, Mr. Marriott, and read to the jury what the record shows.

(Testimony of Lawrence W. Marriott.)

A. Prince Was a Thief. Refer to bid data dated July 3, 1951, at which time we awarded Prince Was a Thief to the La Tijera and Fifth Avenue Theatres to play day and date, since neither theatre requested clearance. Refer to bid data dated July 3, 1951.

Q. This was, then, an occasion when you didn't have to get a waiver of prior availability or clearance, as you call it there? A. That's right.

Q. Again, was there really any clearance in the sense of an interval of time elapsing?

A. No. It was day and date. Both had the same run on the same playing date.

Q. Well, I mean—all right. [1168]

Mr. Mitchell: Reading further from Universal Exhibit G-1, the next picture is Coming Round the Mountain, July 24, 1951, all bids rejected. Academy negotiated.

The next one is Renegade, August 1, 1951. No bids received. La Tijera negotiated.

The next one, Cattle Drive, dated July 6, 1951, La Tijera awarded by bid.

The next one is Magnet, dated August 14, 1951, no bids received. Awarded to Fifth Avenue by negotiation.

Iron Man, August 23, 1951. All bids rejected. Picture to United Artists by negotiation; also to La Tijera by negotiation.

Francis Goes to the Races, August 28, 1951. La Tijera, awarded by bid. Century Drive-In, awarded by bid.

(Testimony of Lawrence W. Marriott.)

Little Egypt, September 17, 1951. La Tijera, awarded by bid. Southside, awarded by bid.

That concludes all of the pictures on the exhibit.

Q. When you awarded a picture to a theatre which had bid the highest, and the matter of a second 7 day run was under consideration, did you go out and solicit a second 7 day run, or did you wait for somebody to come to you?

A. We waited until someone come to us, because when you notify the one who had been awarded the picture to the ones who didn't get it, it was known who had the picture, and anyone desiring the picture would contact us. [1169]

The Court: May I ask a question?

Mr. Mitchell: Yes, sir.

The Court: When you had bids from different people and you accepted one of those bids, did you send a notice to the others?

The Witness: Yes, sir.

The Court: As to who had the bid?

The Witness: As to who the picture was awarded to.

The Court: Invariably you notified the other parties?

The Witness: Yes, sir, at the same time we notified the one who had been awarded the picture.

The Court: You only send those notices to those who have bid. You don't sent it to anyone who didn't bid?

The Witness: No.

The Court: Just the ones that had sent in bids?

(Testimony of Lawrence W. Marriott.)

The Witness: The ones we received a bid from.

Q. (By Mr. Mitchell): So everyone who has bid a picture knows the result?

A. That's right.

Q. If they need a picture of Universal's and want to try and get a day and date run, what do they do?

A. Contact me.

Q. They contact you? A. Yes, sir. [1170]

Q. Who is it contacts the winning bidder to see if he will waive priority of availability?

A. I do.

Q. You see if you can get him to waive that and let you sell another run in the area?

A. That is true.

Q. Do you ever sell more than two 7 day runs in this area? A. I think we have.

Q. I guess maybe this exhibit shows one occasion.

A. I don't know, but I think we have.

Q. I have here a document which the plaintiff has marked for identification, a form of bid letter, dated October 16, 1950, from you to Marco Wolff with respect to the Paradise Theatre. Is that the form of bid letter which you sent out during this period of time? A. That is true.

Q. That bid letter appears to be with respect to a certain picture by the name of——

A. Wyoming Mail.

Q. Is this the kind of a bid letter that was sent out on all pictures after you started bidding in May 1950? A. That is true.

(Testimony of Lawrence W. Marriott.)

Mr. Mitchell: All right. I will offer the document in evidence. How do you want to mark that, Mr. Corinblit? Do [1171] you want to keep that as a plaintiff's Exhibit or mark it as one of Universal's exhibits?

Mr. Corinblit: I think you can mark it as one of yours and substitute a copy and let me have my original.

Mr. Mitchell: All right.

The Court: It may be received in evidence.

The Clerk: Universal's Exhibit G-2.

(The exhibit referred to was received in evidence and marked as Universal's Exhibit G-2.) [1172]

* * * * *

Q. (By Mr. Mitchell): When you say "first run exhibition in Inglewood, California," you mean a 7-day run? A. 7-day availability.

Q. And that is the first time you made pictures available in Inglewood? A. That is right.

Q. Well, if a bid, as it was on numerous occasions here, were awarded to the Academy Theatre and if the Paradise people would come to you and ask you if you would award a day and date run to the Paradise Theatre during this period of time, what would you do?

A. I would contact Fox West Coast to whom the picture had been awarded to.

Q. And say what?

A. And tell them the Paradise had requested that they can use this picture on the same play date

(Testimony of Lawrence W. Marriott.)

and ask them if I could contact the Paradise and sell it to them.

Q. And the same thing with respect to the Southside [1174] Theatre?

A. The same thing.

Q. And the same thing with respect to the United Artists Theatre? A. Same thing.

Q. And the same thing with respect to the La Tijera or would you sell La Tijera and Paradise day and date?

A. Oh, no, no. I would contact whoever the picture had been awarded to.

Mr. Mitchell: That is all.

Redirect Examination

Mr. Corinblit: Do you have any examination, Mr. Johnston?

Mr. Johnston: I have no questions.

Q. (By Mr. Corinblit): Mr. Marriott, would you place in front of you or perhaps you have it there, a copy of Defendant's Exhibit G-1. Do you have a copy there?

(Document handed to witness.)

Q. Now, on the first page of Defendant's Exhibit G-1, which covers pictures licensed from May 1, 1950 to August 24, 1950, that first page reveals that there was one picture that was there—there was a picture won by the Academy in which you—in which the Southside negotiated it for the second 7-day run. That is the picture Winchester .73.

A. That is right. [1175]

(Testimony of Lawrence W. Marriott.)

Q. Now, let us get it clear as to what happened. What happened was that you had bidding. The Academy won the bid. You went to the Fox West Coast and asked them, "Will you let me sell to the Southside," and Fox said, "Okay," and you sold to the Southside. It that how it went? A. No.

Q. Pardon me?

A. No, sir. The Southside contacted me.

Q. The Southside contacted you?

A. Yes, sir.

Q. And asked you to play—asked you to play day and date and then you contacted Fox and asked Fox if that was all right and Fox said it was all right and then you played it day and date at the Southside? A. I made my deal.

Q. Now, on the second page with respect to the picture *Woman on the Run*, November 2, 1950, the same thing happened. The Academy won the bid. Southside you say contacted you and you went and talked to Fox West Coast. You asked them if it was all right with them if you negotiated with the Southside and they said, "Okay," and you went ahead and negotiated with the Southside?

A. That is right. [1176]

Q. And you did that with respect to the picture *Deported*? A. That is right.

Q. As well as with respect to any of the other pictures in which the Academy won the bid and then you negotiated with the Southside. That was the regular way you worked it, is that right?

(Testimony of Lawrence W. Marriott.)

A. That is right.

Q. Now, there is no question about the fact that after—well, both—well, during the early fall of 1950 as well as certainly after April 1951, the Paradise was knocking on your door saying, “Will you negotiate for 7-day run for us”? They were asking for that?

A. That is right.

Q. All right. And——

Mr. Mitchell: Asking for it without bidding.

Mr. Corinblit: Just a minute, just a minute. I think I am entitled to an opportunity to examine the witness.

Q. (By Mr. Corinblit): Now, then, when, and as indicated by the example in Up Front, when they asked you to negotiate for 7 days you went to Fox, or in this case Paradise themselves went to Fox and Fox said, “No soap.” They would not permit the Paradise to play day and date, is that right?

A. Right.

Q. And that happened so far as you are concerned when [1177] you asked Fox if it was all right to let the Paradise play day and date with the Academy and they refused, isn’t that right?

A. I imagine that it is.

Q. Now, it is also true—incidentally, I think we pointed this out before but we ought to do it again—the Academy is located approximately 3½ miles from the Southside and the Academy is located approximately 4½ miles from the Paradise.

Now, Universal never set up this kind of system

(Testimony of Lawrence W. Marriott.)

—you never said to the film companies in the areas
—you never said to exhibitors, “We are going to
sell one run in the Academy and one run in the
Paradise”?

Mr. Mitchell: I don’t know what the question
is. He has so many people mixed up in it. It is
compound and extreme.

The Court: I think we had better delete the ques-
tion.

Mr. Corinblit: All right, sir.

Q. (By Mr. Corinblit): You never—Universal
acting on its own behalf with its pictures never set
up a system whereby it decided in the area that it
would permit the Paradise to play day and date
with the Academy?

A. No, we had no such system.

Q. You always insisted on getting permission
from the Academy in order to license day and date
to the Paradise? [1178]

A. If they had been awarded the picture.

Q. Now, you notice, Mr. Marriott, that the Acad-
emy was willing to release clearance as far as the
Southside was concerned, 3½ miles away, but the
Academy was not willing to release clearance as far
as the Paradise was concerned, 4½ miles away.

Did you ever ask Fox why they were willing to
release clearance over a theatre within 3½ miles but
not willing to release clearance over a theatre 4½
miles? A. I don’t think I did.

Q. You never did? A. I don’t think so.

(Testimony of Lawrence W. Marriott.)

Q. So if the purpose of Fox in refusing to release clearance over the Paradise was to protect the Loyola Theatre, why, you never interfered with that, did you?

Mr. Mitchell: Now, that is certainly argumentative, your Honor, and I object to it on that ground.

The Court: Sustained.

You never discussed with Fox the reason why they would not release the priority as far as the Paradise was concerned, did you?

The Witness: No, sir.

Q. (By Mr. Corinblit): Now, as a matter of fact, in addition to the—I will withdraw that.

There is one occasion—I notice the picture [1179] Prince Who Was A Thief. I think there are some documents that were handed to you with respect to the picture Prince Who Was A Thief. May I examine them for a moment?

All right. Now, the picture Prince Who Was A Thief was played at two theatres? A. Yes.

Q. Or was it not? A. That is right.

Q. The first theatre was the—well, first or second, doesn't matter, one of the theatres was the Fifth Avenue Theatre, is that right?

A. That is right.

Q. And the second theatre was the Tijera Theatre? A. Right.

Q. Now, those theatres, the Fifth Avenue located here, and the La Tijera Theatre is here. Would you read from your reason stated in your docu-

(Testimony of Lawrence W. Marriott.)

ments, your correspondence, as to how it was that those two theatres played day and date?

A. On the contract recommendation for the La Tijera Theatre I state: "Refer to bid data dated July 3rd, 1951," at which time we awarded Prince Who Was A Thief to the La Tijera and Fifth Avenue Theatres to play day and date since neither theatre requested clearance.

"Refer to bid data dated July 3, 1951."

Now on the Fifth Avenue recommendation I state: Mr. Rose [1180] awarded bid on 7-day availability Inglewood on Prince Who Was A Thief to the Fifth Avenue Theatre and since the Fifth Avenue Theatre did not request any clearance we also accepted bid from the La Tijera Theatre on the same availability. They will play day and date. Refer to bid data July 3, 1951. [1181]

Q. Now there again the Fifth Avenue told Universal that "It's all right with us to play day and date with the La Tijera," isn't that right? That is the effect of that statement?

A. I don't know whether that is the effect of the statement or not. In other words, there was a bid and they didn't ask for clearance.

Q. They didn't ask for clearance over the La Tijera? A. That's right.

Q. But they always insisted on maintaining clearance over the Paradise, isn't that right?

A. They usually did. I don't know whether they did or not.

(Testimony of Lawrence W. Marriott.)

The Court: May I ask a question? When a bid comes in, do they in the bid say, "We want clearance over theatres A, B, C, and D"?

The Witness: Generally they do.

The Court: If they don't say anything about wanting clearance——

The Witness: Then we can do as we please.

The Court: If they don't mention the theatres they want clearance over, then you consider it is a waiver of clearance?

The Witness: Yes.

The Court: And you can go ahead and make another [1182] deal with some other theatre?

The Witness: That's right.

The Court: So if they want clearance, they enumerate the theatres in the bid?

The Witness: That's right.

The Court: In this case they didn't enumerate. Neither one of them enumerated the other?

The Witness: That's right.

The Court: And you considered that as open?

The Witness: That's right.

The Court: And then you went ahead and negotiated another contract?

The Witness: That's right.

Q. (By Mr. Corinblit): Mr. Marriott, you say it is enumerated in the bid. In other words, Fox put it in the bid, that they wanted clearance over the Paradise, for example, for the Academy and Fifth Avenue? A. Usually, I think so.

(Testimony of Lawrence W. Marriott.)

Q. Would you give me an example from those records in front of you?

A. No, I can't give you one because I don't have the original bids. All I have is "Refer to the bid data." and that is where bids would be posted. I don't have that information.

Q. Where is that information? [1183]

A. As I have told you, this information was destroyed by an auditor from the home office last year, not only that information, but other information.

Q. Now, isn't it a fact, Mr. Marriott, that in those bid letters Fox took the position that under no circumstances would they permit the Paradise to play day and date with their theatres?

A. It must be the case because I don't think they played, as the records reveal. [1184]

* * * * *

Q. (By Mr. Corinblit): Now, Mr. Marriott, I have examined Fox's Exhibit E in evidence in this case. In there during the period February 16, to March 31, I find two bids on the 7 day run from the Academy Theatre, one March 27th on the picture Target Unknown, and one February 26 on the picture Tomahawk. I went through them in a hurry so it may be that I have missed one.

Mr. Johnston: What was the second one, Mr. Corinblit? [1187]

Mr. Corinblit: Tomahawk.

Q. On neither of those bids is the clearance de-

(Testimony of Lawrence W. Marriott.)

signated that the theatre wanted. Didn't I hear you testify a few minutes ago in answer to the court's question that the theatre that puts in a bid asks for the clearance?

A. They usually do. I can't remember what happened back on all the bids we received. Again, it wouldn't be necessary for them to do it because we read the bid letters we send to all the accounts, and it states in there that it is one theatre on the 7 day availability, and naturally that means one will be all. It wouldn't be necessary, but I do know there is times when they do stipulate that in their bids. I can't remember what happened in all the bids.

Q. Well, now, is it now the testimony that in your bid request you tell them what theatres you are going to grant clearance over?

A. I didn't say that.

Q. In fact there is nothing in the bid request?

A. That is right. We ask for one bid on the 7-day availability. We ask for one run.

Q. Mr. Marriott, really, isn't it a fact that Fox West Coast in all these negotiations that you had, Fox West Coast is the company that determined what Universal was going to do?

If Fox West Coast said it was all right you did it, and if Fox West Coast said it wasn't all right you didn't do it. Isn't that correct?

A. That is not correct.

Q. How many accounts were you serving so far

(Testimony of Lawrence W. Marriott.)

as Fox West Coast was concerned in 1950 and 1951?

A. '50 and '51? Probably in the neighborhood of 100 or more.

Q. On a national scale your company was serving how many Fox accounts?

A. I don't know nationally.

Q. More than three or four hundred?

A. Could be.

Q. And they were a pretty powerful customer of Universal, [1189] weren't they?

The Court: Now, it is too late in the afternoon to start an argument, Mr. Corinblit.

Mr. Corinblit: All right, your Honor. I don't think I have any further questions.

Mr. Mitchell: No questions.

The Court: May this witness be excused?

Mr. Mitchell: Yes.

The Court: You may be excused, and I hope you have a nice vacation.

The Witness: Thank you very much, your Honor. [1190]

* * * * *

Mr. Corinblit: Thank you, your Honor. At this time we would like to read to the jury and offer in evidence the matters contained in the deposition of Mr. Seymour Simon, taken in Chicago, Illinois, on May 31, 1956, and June 2, 1956.

The Court: It may be received.

The Clerk: Will it be marked as an exhibit, Mr. Corinblit?

Mr. Corinblit: No. We will read it in. Mr. Herschel, if you will read the questions, I will read the answers. [1195]

The Court: I might say to the jury that when a witness is out of the state or more than 100 miles from the court house, it is possible to take his deposition and the deposition can be read and considered by the jury the same as if he was here and testified, so although Mr. Corinblit is reading a part of the deposition, remember it is not Mr. Corinblit's words that are being read, but the words of the witness, and it is the testimony of the witness that you can consider.

All right. You may proceed.

SEYMOUR SIMON

was read as follows:

"Direct Examination

Q. (By Mr. Westbrook): Mr. Simon, would you please state your full name?

A. Seymour Simon.

Q. And your present residence, please.

A. 5900 North Christiana Avenue, Chicago, Illinois.

Q. Your present business address?

A. 39 South LaSalle Street, Chicago, Illinois.

Q. You are an attorney-at-law admitted to practice in Illinois? A. I am.

No. 15424

United States
Court of Appeals
for the Ninth Circuit

FOX WEST COAST THEATRES CORPORA-
TION, TWENTIETH CENTURY-FOX
FILM CORPORATION and LOEW'S, IN-
CORPORATED, Appellants,

VS.

PARADISE THEATRE BUILDING CORPORA-
TION, Appellee.

PARADISE THEATRE BUILDING CORPORA-
TION, Appellant,

VS.

FOX WEST COAST THEATRES CORPORA-
TION, TWENTIETH CENTURY-FOX
FILM CORPORATION and LOEW'S, IN-
CORPORATED, Appellees.

Transcript of Record

In Six Volumes

VOLUME III.

(Pages 953 to 1424, inclusive)

Appeals from the United States District Court for the
Southern District of California,
Central Division

FILED

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. —5-27-57

JUN 3 1957

PAUL P. O'BRIEN, CLERK

No. 15424

United States
Court of Appeals
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TWENTIETH CENTURY-FOX
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Appellants,

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Central Division

(Deposition of Seymour Simon.)

Q. Are you also admitted in any jurisdictions?

A. I have been admitted to practice before [1196] the United States District Courts in jurisdictions other than the United States District Court sitting in the State of Illinois.

Q. Is that in connection with particular cases in other jurisdictions?

A. In some instances, it has been in connection with particular cases, and some instances, it has been general admission.

Q. Are you admitted to practice in the United States District Court for the Southern District of California?

A. No. I have been admitted to practice there in specific matters.

Q. Have you at any time represented the plaintiff in this case, Paradise Theatre Building Corporation? A. Yes.

Q. Will you state during what period of time?

A. I first commenced to represent them in the early part of 1950; I continued to represent them up to the present time.

Q. Now in the course of your representations of that company, I take it that you had from time to time occasion to carry on negotiations on behalf of that company with various distributors of motion pictures, is that correct?

A. I have participated as attorney for [1197] that company in conversations with various agents,

(Deposition of Seymour Simon.)

employees or attorneys of motion picture distributors.

Q. I would like to state for the record at this time that in order to facilitate the taking of this deposition, to cut down the time that will be consumed in it, we have a number of documents that we wish to use in connection with the deposition, which have been marked for identification in connection with other depositions in the case; and rather than assign new exhibit numbers to them in connection with this particular deposition, my thought would be to use the numbers which they already bear for purposes of identification.

A. If you follow the number previously assigned, that would be perfectly satisfactory.

Mr. Johnston: Do you make that statement in your capacity as attorney for the plaintiff rather than as a witness?

The Witness: No. I make that in my capacity as a witness.

Mr. Westbrook: We have been following that procedure in connection with other depositions.

Mr. Johnston: I assume that procedure will be satisfactory with other counsel of record."

Mr. Corinblit: Speaking as representing [1198] the plaintiff in this case, we would like to move now to page 15. We will agree to stipulate as to the matter of the documents in accordance with what is in the deposition, but since the documents

(Deposition of Seymour Simon.)

themselves will not be presented to the jury, I don't think there is any occasion to read that section.

We will begin now at page 15.

(The reading of the deposition was resumed as follows.)

“Q. Now it is correct, is it not, Mr. Simon, that subsequent to the date April 17, 1950, you and Mr. Alex Schreiber made a trip to New York?

A. I made a trip to New York. He met me there.

Q. Do you recall the dates when you were in New York?

A. It was in the latter part of April. I don't recall the precise dates. I would think I have records which would show the dates I was in New York. [1199]

Q. Actually, we fixed the dates as, I think, April 25th and three or four days following.

Would that be in general in accordance with your recollection?

A. It was in the latter part of the month. My records might show a day or two sooner or later.

Q. Do you recall approximately how long you were there at that time?

A. I believe I got there before Mr. Schreiber got there, and I might have stayed a day or two beyond the time he was there. But it's my recollection that he was there with me three or four days.

Q. Now prior to the time of your trip to New York in April, 1950, had you had any conversations

(Deposition of Seymour Simon.)

with any representative of of any motion picture distributor with respect to the Paradise Theatre or the clearance or availability for that theatre?

A. The only conversations I might have had would have been long distance telephone calls or calls in New York arranging for appointments to see various distributors and representatives while I was to be in New York.

Q. I take it from what you say that in such telephone calls you would not have actually had any discussion with respect to the theatre, but simply of set-up of an appointment? [1200] A. Yes.

Q. For a personal interview?

A. That is correct.

Q. So that the conversations that you did have in the latter part of April, 1950, are the first ones where you actually discussed the problem of availability for the theatre, is that correct?

A. That is correct.

Q. Now turning your attention to Paramount Film Distributing Corporation, do you recall having a conversation with certain representatives of that company in New York in the latter part of April, 1950? A. I do.

Q. It is correct, is it not, that you first talked to Mr. Louis Phillips about the Paradise Theatre?

A. Before talking to him——

Q. I believe in the latter part of the conversation Mr. Austin Keogh was also present.

A. That is not so.

(Deposition of Seymour Simon.)

Q. May I have your recollection in that regard?

A. My recollection is that Mr. Schreiber and I had an appointment with Mr. Austin Keogh, and we went to his office which is on the south end of the floor where Paramount lawyers have their offices, as you come off the elevator, entering, the aisle runs north and south, or the [1201] corridor runs south and you turn to the right.

At that time we went into Mr. Keogh's office, and we started talking to Mr. Keogh about this situation, and he said that he wasn't as familiar with the situation as Mr. Phillips was, and he asked if he would have any objection to his asking Mr. Phillips to step in.

And I think I recall telling him or calling to his attention that I had just finished a couple of hard fought cases in Chicago against Paramount and Balaban & Katz Corporation, and I had no objection to Mr. Phillips coming in, except that I hoped that we wouldn't refight the battles that we had been fighting in those cases in Chicago.

Mr. Keogh assured me that that would not be the case.

And he made a call for Mr. Phillips, and then Mr. Phillips joined the meeting.

Q. Before Mr. Phillips joined the meeting, had anything been said about the Paradise Theatre?

A. Yes. My recollection is that I had told Mr. Keogh that Mr. Schreiber and I were there to see him about getting pictures for the Paradise Thea-

(Deposition of Seymour Simon.)

tre, and that we wanted Paramount pictures to play on a nonexclusive first-run showing in Los Angeles, that is, a showing which would not prevent simultaneous exhibition in a number of other theatres.

Q. What is known in the trade as a day [1202] and date exhibition first-run in Los Angeles, is that correct?

A. Well, I don't think I used those words.

Mr. Keogh said that Paramount had a franchise agreement with Fanchon & Marco, who operated the Paramount Theatre Downtown and the Paramount Theatre in Hollywood, and that there was a difference of opinion between the licensee and Paramount regarding the legality of that agreement.

And at that time the question of its legality was before a United States District Court, and therefore he felt that the posture of the lawsuit then had some bearing on our discussions and on their willingness to sell first-run pictures to the Paradise Theatre.

It was then that he pointed out that Mr. Phillips was more familiar with that litigation than he was, and suggested that Mr. Phillips join the meeting.

Q. Is that substantially all you recollect being said with respect to the Paradise before Mr. Phillips joined the conversation?

A. I believe that I told Mr. Keogh that I understood that Paramount's position in the lawsuit

(Deposition of Seymour Simon.)

was that the franchise was illegal, and that if it was illegal, from the standpoint of my client, I found no justification for Paramount adhering to the franchise.

I also told him that I felt the area of [1203] clearance of the franchise given the licensee was entirely too broad, and for that reason illegal, and that I didn't see how they could justify continuing to give that clearance, even though they were in litigation with their licensee at the time.

And he said that he believed that their position in the lawsuit was that the clearance feature of the franchise was unreasonably broad, and therefore illegal.

I said that inasmuch as they agreed with my view, that the clearance provisions were illegal, if they continued to adhere to those clearance arrangements provided for by the franchise during the period my client was attempting to obtain Paramount pictures, I thought that my client would have a claim for damages under the Anti-Trust laws.

I also told him that I understood that Paramount was not obligated to give every single one of its pictures to the licensee under that franchise, but could exclude pictures, a certain number of pictures in each year from the operation of the franchise, and that if Paramount thought the franchise was illegal and was maintaining that in a lawsuit, they certainly owed a duty to my client to shoot as many pictures as they possibly could from that

(Deposition of Seymour Simon.)

franchise and offer them to my client for first-run showing.

I believe that it was about at that point that Mr. Keogh said that I was getting into details of the franchise and their position in the lawsuit and it was Mr. Phillips [1204] who knew more about that than he did.

Mr. Phillips was then invited into the meeting.

Q. Before Mr. Phillips came in, did Mr. Keogh say anything about the basis upon which he thought Paramount was advancing the contention that the clearance provisions of the franchise were unreasonable? A. I don't recall.

Q. Do you recall that he said that the basis of Paramount's position in that regard was that the franchise agreement carried forward the clearance of the 1938-39 motion picture season from year to year without modification by reason of the building of new theatres or the changes that might have occurred in the City of Los Angeles over the years?

A. I believe what he said was that—I don't recall his saying the 1938-39 motion picture season. But I believe what he said was the clearance that was imposed under the franchise was the clearance that had been adopted many years before, and since that time Los Angeles had grown tremendously and spread out in various directions; and because of the problems of transportation, Paramount felt that the reasonable way to market pictures there was to have a series of multiple first-run showings

(Deposition of Seymour Simon.)

rather than just confining the first-run to downtown Los Angeles and Hollywood; and that Paramount by the franchise was prevented from doing that; and he thought that the area of clearance, in [1205] view of the changes that had taken place, should not be as large as it was.

Q. Did he tell you that the area of clearance covered by the franchise was the entire county of Los Angeles with the exception of Pomona?

A. I don't recall that.

Q. You don't recall his discussing the extent of the area of clearance under the franchise?

A. I don't recall that. He may have. I don't recall it.

Q. Is that all you recall as having been said by you or Mr. Schreiber or Mr. Keogh before Mr. Phillips entered the meeting?

A. I believe Mr. Schreiber told Mr. Keogh about what a fine theatre he was going to have, about its general location, its size.

Q. Anything in addition to that that was said before Mr. Phillips came in?

A. Not that I can presently recall.

Q. Up to that point, I take it that just you and Mr. Keogh and Mr. Schreiber were present, is that correct?

A. That is correct.

Q. I will show you now a photostatic copy of a map, which bears in the lower left-hand corner the legend, 'Furnished by Alex Schreiber, 4/26/50, in New York,' which is [1206] Defendant's Ex-

(Deposition of Seymour Simon.)

hibit E-7 for identification, and ask you if you recall that Mr. Schreiber had several photostatic copies identical in form of the one which I hand you with him, that he had one such photostatic copy with him at the meeting with Mr. Keogh.

A. Well, I recall his having a document that looked something like this, looked very similar to this.

As a matter of fact, whether this is the exact document or not, I do not know."

Mr. Mitchell: Should not that document be here for our use?

Mr. Corinblit: I beg your pardon.

Mr. Mitchell: You and Mr. Simon are testifying about a document. I think we should have the document.

Mr. Corinblit: Very well.

Mr. Mitchell: Who is going to introduce this into evidence? It is your map.

Mr. Corinblit: Speaking as an attorney for plaintiff in this case I will stipulate you may at this time introduce the map.

Mr. Mitchell: I don't care who introduces it, but since you are going to testify about it I think maybe we had better have it in evidence and let the jury see it.

Mr. Corinblit: Yes. [1207]

Mr. Mitchell: Do you want us to offer it as our exhibit?

Mr. Corinblit: Yes.

(Deposition of Seymour Simon.)

The Court: You may proceed.

The Clerk: Paramount's Exhibit B-4 in evidence.

(The document referred to was received in evidence and marked as Paramount's Exhibit B-4.)

Mr. Mitchell: May the map be shown to the jury?

The Court: Yes, it may be passed around to the jury but continue with the reading of the deposition.

(The reading of the deposition was resumed by counsel as follows:)

"Q. Do you recall anything being said about that document before Mr. Phillips entered the meeting?

A. Well, there was something said about this document. Whether it was said before or after Mr. Phillips entered the meeting, I do not know.

Q. Do you recall also that Mr. Schreiber had with him a schedule showing the competitors featuring motion pictures in the area in and surrounding Inglewood, California, which schedule also included some other memoranda with respect to names of theatres, their address, sets, and so on?

A. Is this a schedule of the showing of first-run pictures?

Q. There was a schedule, I believe, showing the particular [1208] pictures of distributors other than Twentieth Century-Fox in the Loyola Theatre.

A. Well, I recall the latter document. I recall Mr. Schreiber had that with him. And I recall he

(Deposition of Seymour Simon.)

had other material with him. I don't recall the exact nature of that material, no.

Q. Do you recall whether there was any conversation about that material before Mr. Phillips entered the meeting?

A. I have no recollection of that.

Q. Now going on with the course of the meeting, can you tell me what was said by you and Mr. Schreiber and Mr. Keogh and Mr. Phillips after Mr. Phillips came into the meeting?

A. Mr. Phillips said that Paramount's position would be that pending the determination of the lawsuit, which was then in existence, Paramount would continue to license its pictures to the Paramount Theatre downtown in Los Angeles and Paramount Theatre in Hollywood.

He said that he was hopeful that the franchise would be terminated by the action of the Court, because Paramount desired to set up, or at least—I won't say he said they desired to set up. They were giving serious consideration to setting up a series of multiple first-runs where maybe eight, ten theatres in the Los Angeles area would be permitted to show a picture simultaneously on its first showing in Los Angeles, and that if such a system was established, [1210] the Westchester area would certainly qualify as a first-run area."

The Court: Just a minute. I think possibly I should advise the jury, I believe I am correct, that the lawsuit referred to in this connection is the Partmar case which has heretofore been referred to and was tried in this court.

(Deposition of Seymour Simon.)

That is correct, isn't it?

Mr. Corinblit: That is correct, sir.

(The reading of the deposition was resumed by counsel, as follows:)

"Q. In that connection, did he say Westchester alone, or Westchester, Inglewood, and surrounding communities?

A. I think he said Westchester.

However, he said that Paramount couldn't do anything in that direction until such time as they found out that the lawsuit, what their legal position was.

He then raised the question of how Paramount should offer pictures to the Paradise Theatre, in view of the fact that they were unable to, at least, for the time being, offer the Paradise first-run pictures.

I think before we got to that, I pointed out to him, as I had to Mr. Keogh, that as I understood the franchise, there were a number of pictures each year which Paramount [1211] was not required to offer to those Paramount Theatres, and that I saw no reason why this play of multiple first runs that he said Paramount was interested in establishing once they had their position under the franchise clarified, should not be established immediately with respect to those pictures that didn't have to go to Fanchon & Marco under the franchise.

And his answer to that was that they didn't want to—as I recall it—they didn't want to set up any new system of distributing until they were free to license all of their pictures in that fashion—and

(Deposition of Seymour Simon.)

also, he said that in his opinion there was question as to whether Paramount was safe legally in taking any pictures away from the Fanchon & Marco theatres.

I think at that point I pointed out to him that the Loyola Theatre had, in fact, previously shown some Paramount pictures on first-run showing in Los Angeles simultaneously with other theatres in the Los Angeles area, and I asked him how it was that the Loyola was able to get those pictures if all Paramount pictures were supposed to go to the Paramount Downtown theatre and Paramount Hollywood.

I believe his answer was that those were pictures that Fanchon & Marco had chosen not to exhibit under their franchise.

Q. Do you recall there were only two such pictures? [1212]

A. There weren't a large number. I was thinking, as I tried to think back, that there were four or five. There may have been two.

When I say I was thinking, I was thinking just now as I was thinking back to six years ago, that there were probably four or five, and if you had asked me or told me how many, I would have said I thought about four or five. I am not going to argue. There may have been just two.

Then he started talking about how was Paramount going to offer pictures to the Paradise Theatre. And I said I thought there would have to be

(Deposition of Seymour Simon.)

biddings set up between Paradise and the La Tijera located in Inglewood.

Q. Did he say he thought that?

A. I don't recall his saying that he thought that. I told him that it was our position that the Paradise could play simultaneously with any of those theatres in Inglewood without affecting them in any way, and I didn't see why they didn't sell the Paradise a simultaneously showing with the theatres in Inglewood.

And I pointed out to him that there were so many theatres in Inglewood, all of them vying for product, or at least I thought they were vying for product, that there certainly would be one theatre in there that was willing to play pictures along with the Paradise, particularly if its competitors said, 'We won't play those pictures that the Paradise [1213] plays simultaneously.'

If that situation obtained, then one of those theatres, in order to get a jump on its competitor, would come rushing forward and say, 'We will be glad to do it.'

And I said, particularly on their bigger pictures, that everyone was interested in playing, I just could not see how if they offered the picture to the Paradise, every theatre in Inglewood was going to say, 'We don't want to play that picture because the Paradise is going to be able to play it simultaneously with us.'

And then I recall Mr. Phillips said that the trouble with my thinking about the motion picture busi-

(Deposition of Seymour Simon.)

ness was that I had the idea that they could set up a different licensing procedure and a different clearance pattern for every picture, but actually they had to release all pictures in the same manner with the same clearance because exhibitors insisted that they do that.

I told him that I got my ideas as to the fluidity with which distributors should license their pictures from ideas that I had read he, himself, had promulgated.

One of them was a general letter of instructions that the general sales manager of Paramount had sent out to all his branches back in 1947, '48 or '49. It might have been as far back as '46.

And I told Mr. Phillips that I assumed he had had a [1214] hand in preparing that, and that document said that on different pictures he would assume that if the proper factors were considered in granting clearance, the different length of clearance would be granted on different pictures, and also the area of clearance would be different on different pictures.

And then I reminded Mr. Phillips that in a memorandum he had written he had gone on to announce the same sort of approach toward the determination of what was the proper clearance, namely, it should vary from picture to picture, dependent upon the economic conditions surrounding each picture and the degree of competition for the picture.

Now Mr. Phillips said that regardless of all that, things just didn't work out that way, and even if a

(Deposition of Seymour Simon.)

distributor tried to vary clearance both from the standpoint of length of clearance and area of clearance from picture to picture, the exhibitors wouldn't stand for it and they would insist that each distributor grant uniform clearance as to each of the pictures and ultimately that all the distributors grant uniform clearance.

I told Mr. Phillips that that wasn't my experience at all, and that I thought that Paramount could steal a march on its competitors in dealing with the Paradise by offering its pictures to the Paradise to play simultaneously with theatres in Inglewood. [1215]

This would then make the Paramount pictures more attractive to the Paradise, Paradise would probably buy Paramount pictures in preference to pictures of other companies, and at the same time Paramount would not be precluded from selling its pictures to other theatres for simultaneous showing, and then I was sure they would find plenty of other theatres willing to buy the pictures rather than letting them go by default to competitors.

Q. Do you recall anything else being said at that meeting?

A. Well, I do recall as we were breaking up Mr. Schreiber offered to give Mr. Phillips a copy of this map that he had. Either it was in the form of Exhibit E-y, or substantially similar to that.

Mr. Phillips said he would be very happy to have that, and I think there was some question about where a copy of it was to be made.

(Deposition of Seymour Simon.)

I think Mr. Schreiber said he would take it out to a photostater or have a copy made and furnish it to Mr. Phillips.

At the end, Mr. Phillips and Mr. Keogh said that they would have to look into the matter further as to how they were going to offer pictures to the Paradise and let me know.

Q. Do you recall at any time in the conversation Mr. [1216] Phillips saying that the problem with respect to the Inglewood and Westchester area was not so much of clearance between theatres, but was one relating to a number of availabilities when day and date availabilities were going to be offered by Paramount in that area.

A. I don't understand your question. Day and date availabilities? On what ground?

Q. On the first Inglewood showing, not only Los Angeles, as a 7-day availability, that is, 7 days after Los Angeles first run.

A. Your question is what?

Q. Do you recall Mr. Phillips saying that the problem was not so much one of clearance in the Inglewood-Westchester area as it was the number of day and date showings on the 7 day availability that were going to be offered by Paramount in the Inglewood and Westchester areas.

A. Were going to be offered? In what connection?

Q. To the exhibitors first for exhibition.

A. Are there any other ways you can refresh

(Deposition of Seymour Simon.)

my recollection as to the subject matter you are attempting to lead into?

Q. Well, you recall Mr. Phillips saying that the problem was one of priority of run rather than clearance?

A. Well, that's what we were talking about, priority of run. [1217]

Q. Rather than——

A. It wasn't with respect to first run. I have been using the word clearance, but in the sense that the clearance preventing the simultaneous exhibition with the Paramount Hollywood and Paramount Downtown by any other theatre.

You have me a little confused, because apparently you are using priority of run in a different sense than clearance.

Are you using clearance to mean the length of time that elapses between runs?

Q. That's my understanding of the word clearance, yes.

A. Well, I haven't used clearance in that sense.

Q. You have used clearance to mean priority of run?

A. I have used it to mean priority of run, and also the length of time elapsing between successive runs.

Certainly, when I was talking about the clearance under that first run franchise, I was talking about an agreement which precluded simultaneous first run showing in a large area. I wasn't talking about a situation where perhaps the Paradise was held

(Deposition of Seymour Simon.)

back to playing 14 days after first run when we thought it should be playing ten or nine or eight days after first run.

Q. Do you recall anything being said in your conversation about the fact that Paramount was already offering two [1218] runs on availability of seven days after Los Angeles first run closing in the Inglewood-Westchester area so that it was entirely possible under the Paramount distribution policy at the time for the Paradise to play day and date with theatres in Inglewood?

A. I believe there was some mention made of the fact that theatres in the Inglewood area under the Paramount selling procedure which were much closer together and much more competitive to each other than the Paradise was to any of them, would be able under the selling procedure which Paramount was either following then or which Mr. Phillips suggested they might follow, it would be possible for those theatres to play day and date, and yet the Paradise Theatre, which was much less competitive to either theatre than those two were to each other, would not be permitted to play simultaneously with them.

And I said that I thought that was unfair.

Now, I don't recall whether Mr. Phillips said that Paramount was already selling that way or whether he said that they were thinking of selling that way, and asked what we thought about it. [1219]

Q. Now you have said that the Paradise would not be permitted to play day and date.

(Deposition of Seymour Simon.)

Do you recall that actually being said at the time of this conversation in New York?

A. I don't recall the exact words that either Mr. Phillips or I used, of course. That was more than six years ago. I have given you my best present recollection of what was said.

Q. I understand that.

Now have you told us everything that you recall at the meeting being said at the meeting with Mr. Phillips and Mr. Keogh on April of 1950?

A. There was one other theory of motion picture distribution that Mr. Phillips raised and took issue with me on. I have covered one when I talked about this idea of clearance, both as to time and area, from picture to picture.

There was one other theory that he raised, and then proceeded to tell me I had been wrong about when I had been arguing here in Chicago. But I don't recall what it was. We got into a conversation about that.

Q. You don't recall that as having any particular bearing on Paradise?

A. I think he tried to bring it into the Paradise [1220] situation, but I really felt that we are doing what I told Mr. Keogh I thought we would be doing, refighting some battles in Chicago.

Q. You don't recall anything more about it than that at the present time? A. No.

Q. Now I take it you have stated your present recollection of the substance of your conversation with Mr. Phillips and Mr. Keogh.

(Deposition of Seymour Simon.)

A. Yes, I have.

Q. Did you at the time of this meeting or at any time thereafter prepare any written memorandum of the conversation that you had?

A. I did not.

Mr. Johnston: Do you know whether Mr. Schreiber did?

The Witness: I do not, no.

Mr. Johnston: Mr. Simon, how long was this meeting with Mr. Phillips and Mr. Keogh?

The Witness: Oh, I judge we were there from an hour to an hour and a half. We were proceeding at this thing fairly leisurely there.

Mr. Keogh had a nice big comfortable office, soft chairs. And except when we get to refighting a few battles in Chicago, every one of us was quite relaxed. [1221]

Mr. Johnston: Was that the first distributor you called upon with Mr. Schreiber when you made the visit to New York in the latter part of April?

The Witness: I do not recall.

Mr. Johnston: Do you recall the sequence of your visits?

The Witness: No, I do not.

Mr. Westbrook: Q. There was one other question I did want to ask you about that conversation before we leave it.

Do you recall Mr. Phillips saying that Paramount and Fanchon & Marco had entered into what was nominated a stand-by agreement, or two stand-by agreements with respect to the franchise situation,

(Deposition of Seymour Simon.)

pending the outcome of the litigation between Paramount and Fanchon & Marco?

A. I do not recall.

Q. Do you recall Mr. Phillips saying that one of the reasons why Paramount had decided not to depart from the policy of licensee pictures to Paramount Downtown and Paramount Hollywood pending the determination of the litigation with Fanchon & Marco, was because of the very substantial damages with which Paramount would be faced if their position in the lawsuit with Fanchon & Marco were not sustained? [1222]

A. Yes, I recall that being said by either Mr. Keogh or Mr. Phillips. I do not remember which.

And I think I replied to that that on the other hand, if their position were sustained, they might be subjected to heavy damages on the part of independent exhibitors who were being deprived of the opportunity of playing first-run, while they were adhering to the franchise. And even if their position were not sustained in their litigation with Fanchon & Marco, they might subject themselves to that type of liability under the Anti-Trust Laws.

And one of them said that they appreciated that, but that was the decision that they, as lawyers for the company and the people who were administering the company, had to make, which of a series of damage suits they would prefer to face.

And I told them that I agreed with that, that that was a decision they had to make. I couldn't make it for them.

(Deposition of Seymour Simon.)

Q. Now with regard to the subject that you mentioned of there being certain pictures that were not covered by the franchise, do you recall either Mr. Phillips or Mr. Keogh saying that the only pictures that were not covered by the franchise were those exhibitions which were pre-released or road show exhibitions? [1223]

A. Yes, I recall that.

Q. And that they were limited in number to not more than four a year?

A. Well, I recall the number four. Now whether it was that pre-release or road show engagements were limited to four, or whether in addition to pre-release and road show engagements four pictures could be excluded from the franchise, even though they weren't pre-release or road show engagements, I don't recall.

Q. Do you recall either Mr. Phillips or Mr. Keogh saying with respect to those pictures which Paramount elected to treat on a pre-release or road show basis, that they preferred such exhibition to occur in the Hollywood Boulevard area or in downtown Los Angeles?

A. I don't recall that."

Mr. Corinblit: Speaking as attorney for the plaintiff in this case, I would like to omit the portion beginning at the bottom of page 40 and running over to page 42, beginning with the question: "Now you recall that the Paradise Theatre opened in August, 1950?"

Beginning there, Mr. Herscher.

(Deposition of Seymour Simon.)

(The reading of the deposition was resumed as follows:)

“Q. Now you recall that the Paradise Theatre opened in August, 1950? [1224]

A. I don't recall when it opened.

Q. Well, are you able to state whether or not during the period following your meeting with Mr. Phillips and Mr. Keogh in New York, and continuing until the opening of the Paradise Theatre, you, personally, had any other conversation with any representative of Paramount Film Distributing Corporation or Paramount Pictures Corporation?

A. I don't recall any.

Q. Now directing your attention to Loew's, Incorporated, when you were in New York in April of 1950, did you have any conversation with any representative of that company about the Paradise Theatre?

A. Yes.

Q. Will you state with whom?

A. Benjamin Melniker and J. Eisenberg.

Q. Were they both present together throughout your meeting?

A. I am not sure.

Q. I take it that you were present and Mr. Alex Schreiber was present?

A. Yes.

Q. Anyone else?

A. Not that I recall.

Q. Do you recall where the meeting occurred?

A. My recollection is that it occurred in the Loew's Building at 1540 Broadway in New York City.

Q. In either Mr. Melniker's office or Mr. Eisenberg's office?

(Deposition of Seymour Simon.)

A. I believe it was in Mr. Melniker's office.

Q. Will you tell me as nearly as you can recall what was said by you, Mr. Schreiber and Mr. Melniker and Mr. Eisenberg in that meeting?

A. I said that we wanted to play their pictures on the first-run showing in Los Angeles.

Mr. Melniker said that was out of the question because they licensed their pictures to only two theatres for first-run showing; one of them was in downtown Los Angeles, I think it was the State Theatre, and the other one was in Hollywood, I think it was the Egyptian Theatre, and those are the only first-runs that they would license, nothing could be done on our request for first-run.

Q. In that connection, do you recall either knowing at that time or recalling a statement at that meeting, that, in fact, Loew's licensed some of its pictures during the period just prior to the time of your meeting to one or two other theatres in the Hollywood Boulevard area and one or two other theatres in the downtown Los Angeles area, but that in any event it [1226] was Loew's policy to confine the first run exhibition of its pictures to those two areas?

A. Well, I said that I understood that previously they had licensed at least three first-run showings, that they had licensed two pictures to a theatre in either Beverly Hills area or Wilshire area, and that indicated that Loew's didn't confine its showing to only two theatres.

Mr. Melniker said that they had done that, but

(Deposition of Seymour Simon.)

they had changed, and now they were confining their showing to two theatres.

Q. One in Hollywood and one in downtown Los Angeles?

A. That is correct. And I said, well, I didn't see any reason for that. What was the reason for it?

He said that was a company decision and they would not sell more than two showings.

I think I might have referred to a few Loew's pictures that, in previous times, had been exhibited at the Loyola Theatre too.

I believe there had been one or two exhibited at the Loyola Theatre on the first-run showing, although I am not sure of that.

Q. Do you recall Mr. Melniker saying that that was years ago?

A. Yes. He said that was years ago, but I told [1227] him it wasn't so long ago. It was in 1946 or 1947 that that had happened. I didn't think that was so long ago.

Q. This was in 1950? A. Yes.

Q. What else was said at that meeting, that you recall?

A. Well, then he said, 'Let's get down to business here and not waste time. We can't sell you first-runs, so don't waste any more time talking about that. Now we will talk to you about how we can sell. It's obvious you are going to be in competition with Inglewood, and you ought to compete against the theatres in Inglewood.' I think he said including the Academy Theatre and the Fifth Ave-

(Deposition of Seymour Simon.)

nue. I believe that went as far as the South Side Theatre for a 7-day showing and——

Q. Let me interrupt. Is your recollection firm on the South Side Theatre?

A. It's not firm on that, but it's firm on the Academy.

Q. Go ahead. Excuse me.

A. And I told him that I thought that was ridiculous, that those theatres were just too far away to be competitive, and that the Paradise, in my opinion and [1228] Mr. Schreiber's opinion, could have simultaneous showings with those other theatres without Paradise being affected and without the other theatres being affected.

I told him that I thought the best way to find out what the best way of licensing the product was was to offer a number of pictures to the Paradise for simultaneous showing with theatres in Inglewood, and in that way he would find out how that method of licensing did affect the theatres in Inglewood, if it affected them at all.

Q. What did he say in response to that?

A. Well, he said they would look into it and let me know.

Q. Is that all you recall about that meeting?

A. That's about all I recall."

Mr. Corinblit: Now speaking as attorney for the Paradise Theatre, the reference to documents concerning which we will be able to stipulate, I am sure, we will omit them. Going over now to page 48, beginning with the question: "Now between the

(Deposition of Seymour Simon.)

time of your conversation with Mr. Melniker and Mr. Eisenberg—" if there is no objection.

Mr. Herscher: Is there any objection?

Mr. Mitchell: No, we are not objecting. [1229]

(The reading of the deposition was resumed as follows):

"Q. Now between the time of your conversation with Mr. Melniker and Mr. Eisenberg in New York in the latter part of April, 1950, and the opening of the Paradise Theatre, do you recall having any other conversations with any representative of Loew's, Incorporated about the Paradise?

A. Yes. I believe that I had some long distance telephone conversations with Mr. Melniker.

Q. Are you able to fix the time of those conversations? A. No, I am not.

Q. That would be your recollection, it was in the period that I indicated? A. Yes.

Q. Do you recall the first of those conversations?

A. I don't recall how many there were.

Q. You are not able to separate one from the other, is that correct?

A. No, I am not able to do that.

Q. Do you recall the substance of the conversations? A. I don't recall that either.

Q. Do you recall whether any of them related to the pictures 'Father of the Bride' and 'Asphalt Jungle'? A. I don't recall. [1230]

Q. Do you recall whether your conversations related to 'Annie Get Your Gun'?

A. I don't recall.

(Deposition of Seymour Simon.)

Q. Apart from those telephone conversations, you don't recall having had any other conversations with any representative of Loew's, Incorporated, during the period from the end of April of 1950 until the opening of the theatre? A. No.

Q. Referring now to Warner Bros., did you, when you were with Mr. Schreiber in New York in the latter part of April, 1950, have a conversation with a representative or representatives of that company about the Paradise? A. Yes.

Q. Would you state with whom?

A. Howard Levinson.

Q. I take it you and Mr. Schreiber were present, and Mr. Levinson, and no one else, is that correct?

A. Yes.

Q. I take it the conversation occurred in Mr. Levinson's office? A. That is correct.

Q. Will you tell me as nearly as you can recall what was said by each of the persons?

The Witness: Do you think we should break off now? [1231]

Mr. Westbrook: Yes. This would be a good time."

"Q. Mr. Simon, would you tell me whether or not you recall having made any memorandum of your conversation with Mr. Eisenberg and Mr. Melnick in April, 1950? A. I did not.

Q. So far as you know, no one else did?

A. I have no knowledge as to whether Mr. Melniker and Mr. Eisenberg did, and I have no knowledge as to whether Mr. Schreiber did.

(Deposition of Seymour Simon.)

Q. Now Thursday we had just commenced talking about your visit to Mr. Levinson of Warner Brothers in New York in April of 1950.

As I recall, your testimony was that you had discussed the Paradise Theatre with him at that time, is that correct? A. Yes.

Q. And I take it that was in Mr. Levinson's office? A. Yes.

Q. And the persons present were you, Mr. Schreiber and Mr. Levinson. A. That is right.

Q. Now will you tell me as nearly as you recall what was said by you, Mr. Schreiber and Mr. Levinson [1232] at that time?

A. I told Mr. Levinson about this Paradise Theatre, which was being built, and which would soon be ready for opening.

And Mr. Schreiber, I believe, embellished my description by telling Mr. Levinson what a beautiful and finely appointed theatre it would be.

I then said that the theatre—I said that Mr. Schreiber wanted to play at the theatre first-run pictures, and he would like to be able to license Warner Pictures on a basis which would not prevent simultaneous showing of the pictures in other theatres.

Mr. Levinson said he believed that that would be impossible, because Warner Brothers licensed their first-run pictures to their own theatres in Los Angeles.

Q. To their three Warner Brothers Theatres,

(Deposition of Seymour Simon.)

Warner Downtown, Warner Hollywood and Warner Wilton?

A. I don't remember the specific names of the theatres. He might have. I do recall that he pointed out that they have their own theatres and they would not be willing to license first-run pictures to any other theatres so long as they could play them in their own theatres, and so long as that situation [1233] prevailed, he believed it would be the desire of his company to confine the first-run exhibition in Los Angeles of Warner pictures to theatres owned by the same company as was producing and distributing the pictures.

I think we then asked him about playing the pictures on the availability of seven days after first-run without bidding against theatres to the east of the Paradise, that is, theatres in Inglewood, and my best recollection is that he said he would look into it and let us know.

I don't recall his having given us any definite answer.

Q. Do you recall his saying that he didn't have anything to do with that phase of the problem, and that the thing to do was to talk to Warner's representative in Los Angeles, Mr. Herbel and Mr. Greenberg?

A. I don't recall his having said that. He may have.

Q. Is that all you recall about your conversation with Mr. Levinson in April, 1950?

A. That is all I can recall at the present time.

(Deposition of Seymour Simon.)

Mr. Johnston: How long did that meeting take, Mr. Simon?

The Witness: I don't recall.

Q. (By Mr. Westbrook): I take it it was a relatively [1234] short meeting.

A. I don't recall how long it took, and I don't know what you mean by relatively short.

I will say that I have known Mr. Levinson since 1938, 1939 or 1940, and I have seen him on several occasions since then.

I like to think he is a friend of mine. And usually when I go into his office and see him, I talk about other things than the immediate problem at hand.

We might have talked about other subjects than the Paradise Theatre both before and after we talked about the Paradise.

Q. Actually, you are on friendly terms with a number of the members of the legal staffs of the various distributors in New York, is that correct?

A. Well, I certainly have friendly feelings toward a lot of lawyers who work for film companies in New York. I think they are nice people, doing their job. I often differ with them on what I think the law requires, and also what I think is good judgment. But lawyers working for the film companies obviously have a different point of view than I have working as a lawyer for independent exhibitors, and I hope that they have this friendly feeling towards me which [1235] I have towards them.

(Deposition of Seymour Simon.)

Mr. Johnston: It isn't confined exclusively to New York lawyers, this feeling of friendship, I hope?

The Witness: Well, I hope it isn't either.

Q. (By Mr. Westbrook): I show you now three documents, which consist of correspondence between you and Mr. Levinson, being respectively dates of June 7, 1950, which is Defendants' Exhibit H-7 for identification, June 9, 1950, which is Defendants' Exhibit H-8 for identification; and June 15, 1950, which is Defendants' Exhibit H-9 for identification.

I will ask you if you recall sending, or as the case may be, receiving those letters on or about the dates which they bear? A. I recall H-7.

I recall H-8.

I recall H-9.

Q. Now during the period from the time of your conversation with Mr. Levinson in New York in April, 1950 until the opening of the Paradise Theatre, did you, to the best of your recollection, have any other conversation with any representative of Warner Brothers about the Paradise Theatre?

A. No, except I might have had a long distance telephone conversation with Mr. Levinson. [1236]

Q. You don't have any distinct recollection one way or the other?

A. It seems to me that I did call him as a follow-up to the letters that you just showed me, and I asked him to find out what his company was going to do.

As I recall it, I asked him what the decision was

(Deposition of Seymour Simon.)

with regard to the Paradise, and he said he didn't know, that would be made by the distribution people.

I asked him to find out what it was, and advise me, and he said he would try to do it and let me know.

I don't believe he ever did advise me.

Q. Do you recall learning before the opening of the Paradise that the opening picture on the top half of the program was a Warner Brothers picture on a seven-day availability?

A. I don't recall that.

Q. Does that refresh your recollection learning either from Mr. Levinson or someone else that Warner's had agreed to license three Warner Brothers pictures to the Paradise on a seven-day availability in succession on an experimental basis to see what the results would be on that availability.

A. That does not refresh my recollection. I don't recall that. [1237]

Q. Now turning to Universal, did you in April, 1950, when you were in New York with Mr. Schreiber, have a conversation with a representative of Universal Pictures Company, Inc., or Universal Exchanges, Inc.?

A. Yes, I did.

Q. That was Mr. C. S. Landau?

A. Cy Landau.

Q. I take it that conversation occurred in Mr. Landau's office, is that right?

A. Yes.

Q. You and Mr. Schreiber and Mr. Landau were present?

A. We were present, yes.

(Deposition of Seymour Simon.)

Q. Was there anyone else, as you recall it?

A. Well, I don't recall. I do remember that Mr. Landau had a desk that was right near the door, and whether there was another desk in the room that someone else occupied, and whether that person was there, I don't remember. But if the person was there, he or she didn't participate in the conversation regarding the Paradise.

Q. Now will you tell me as nearly as you recall what was said by you, Mr. Schreiber and Mr. Landau on that occasion?

A. Well, either Mr. Schreiber or I told him about [1238] the Paradise Theatre being built where it was located, how big it was going to be, what kind of a theatre it was going to be, and then I told him that we wanted to play their pictures on first-run showing in Los Angeles.

I pointed out to Mr. Landau that Universal sold its pictures to four or five theatres in the Los Angeles area for a multiple first-run showing, and I believe I told him that all or a majority of those theatres were Fox Theatres, and that I saw no reason why they shouldn't permit an independent to break into the first-run exhibition field on their pictures.

I told him what we preferred to do is to play their pictures and let anyone else who wanted to play, who they wanted to license, play their pictures along with us, that if they weren't agreeable to that, then we would be able to bid against other theatres for an additional first-run showing, that is, in addi-

(Deposition of Seymour Simon.)

tion to what they were then selling, and if they weren't agreeable to that, then I saw no reason why we shouldn't be permitted to bid against a theatre, I believe in Culver City.

Q. Culver Theatre?

A. Well, that sounds like the name of it, but it was a theatre, I knew, in Culver City that was playing [1239] their pictures on a first-run showing.

I believe I gave them the name of the theatre in Culver City at the time. Now whether it was the Culver Theatre or not, I don't now recall.

I went on and told him that I thought that since they had this multiple first-run policy, I could see no justification for excluding us from the opportunity to compete for first-run showing of motion pictures.

Q. Do you recall what Mr. Landau said in response to that?

A. I believe he said that he would have to look into it and let me know.

Q. In that connection, did you say anything about the Paradise Theatre being competitive with the Culver Theatre in the sense, to some extent at least, on a first-run policy they would be dependent upon the same patronage?

A. No. What I told them was really just the opposite of that, that I thought that we could play pictures on a first-run showing at the same time as that theatre in Culver and not affect the Culver Theatre to any marked extent, any noticeable extent.

(Deposition of Seymour Simon.)

Q. In other words, it was your view, I take it, that the Culver Theatre does not draw any substantial [1240] number of patrons out of the Westchester area?

A. Well, I don't know that I had an opinion on that. But I told him that I felt that if we played on a first run, that would create additional business, and we would do business and the Culver would do just as much business as they had ever done.

But I did tell them that if he was not willing to sell us that way, and if the only way we could get into the first-run market was by bidding against the Culver Theater, or the theatre in Culver City—I am assuming now that you said so that it was the Culver Theatre—that if the only way we could get into first-run was by bidding against that Culver Theatre for the pictures, that they were showing, then we would be willing to do that, although I thought and I expressed to him the thought that the wisest distribution policy would be to add additional first-runs.

Q. Did you have any conversation with him about the number of additional first-runs that would be necessary or desirable to add in the Los Angeles metropolitan area?

A. I believe he might have raised the question as to how many additional first-runs they would have to create if they gave the Paradise Theatre first-run [1241] pictures, and where they would stop.

And I also told him that their policy of multiple first-runs in Los Angeles had apparently been a

(Deposition of Seymour Simon.)

good policy for them, and I felt they would be better off by having additional first-runs.

And I told them, how many additional first-runs they should have, I couldn't answer. That was their problem.

Q. Did Mr. Landau say anything to you about the fact that Universal was having trouble carrying the overhead of five theatres on a first-run day and date policy and was considering reducing the number of day and date first-runs?

A. No, I don't recall his saying that at all.

Q. Your recollection is simply that he said he would look into it and advise you, is that right?

A. That is right.

Q. Now what was said with respect to any other run or availability, if you recall?

A. I don't think anything was said about any other run or availability in that conversation.

Q. Do you recall that following your conversation with Mr. Landau in his office, while you were still in New York, you had a telephone conversation with him?

A. I recall talking to him again. Whether he [1242] called me and asked me to come over and see him and I saw him again, or whether I spoke to him on the telephone, I don't remember, but I do know that he gave me an answer while I was in New York to the request that Mr. Schreiber and I had made.

Q. And what was that answer? [1243]

A. The answer was that under no circumstances

(Deposition of Seymour Simon.)

would they offer first-run pictures to the Paradise Theatre on any basis.

Q. That is, first-run Los Angeles?

A. I said pictures to the Paradise Theatre on a first run showing on any basis. That is not without bidding against the Culver. And they wouldn't permit us to bid against the Culver or any other theatre, that they just weren't going to let the Paradise have the opportunity to play their pictures first-run.

Q. I just want to be clear. They only used the term "first-run." You were talking about first run Los Angeles and not first run Inglewood?

A. First run Los Angeles.

Q. Do you recall whether on that occasion or your second conversation with Mr. Landau there was any discussion about a seven day availability?

A. Yes, there was.

Q. What was said in that respect?

A. Well, I told him since that was his position on first run, we had to have pictures to play in the theatre, and the next best thing was the seven day availability.

And so I was asking him to permit us to play on a seven day availability without bidding against other theatres. [1244]

Q. Do you recall telling him that Mr. Schreiber would be satisfied with that availability?

A. I don't recall telling him that, no, because he wouldn't be satisfied with anything short of first run.

(Deposition of Seymour Simon.)

But I think I probably did express to him the idea that since we couldn't get first run, we had to try to get the next best thing, which was the seven day availability.

Q. I show you now a photostatic copy of an original of a letter on the letterhead Universal Pictures Company, Inc., addressed to you, signed by Mr. Landau, under date of May 4, 1950, which is Defendants' Exhibit I-5 for identification, and ask you if that refreshes your recollection that you did, in fact, tell Mr. Landau that Mr. Schreiber would be satisfied with a seven day availability, provided that there was no bidding?

A. That does not refresh my recollection, and I deny that I told him that Mr. Schreiber would be satisfied with a seven day availability, even though there was no bidding in lieu of first run.

I did tell him what we did want, since we could not get first run, a seven day availability without bidding.

Q. Now, on the occasion of that conversation—"

Mr. Mitchell: On that letter, your Honor, I think perhaps that is one that should go into evidence. [1245]

Mr. Corinblit: Speaking now as counsel for plaintiff, your Honor, every one of these letters will be in evidence and we will put each and every one in. If we want to put in all the evidence that is marked here, that is one thing, but if we are going to do it piecemeal, I think it is not appropriate.

(Deposition of Seymour Simon.)

Mr. Mitchell: That has reference to context. To put all the letters in without reference to context doesn't accomplish the purpose. Here a witness is being asked about a particular letter, not simply identifying it. He is being asked about a particular letter, and in order to get the context of it, this is the time when the letter should come in, and we desire to offer it.

Mr. Corinblit: All right, your Honor. I withdraw the objection.

The Court: It may be received in evidence and marked.

The Clerk: Universal's Exhibit B-3.

(The exhibit referred to was received in evidence and marked as Universal's Exhibit B-3.)

* * * * *

Mr. Corinblit: Speaking as attorney for the plaintiff, we will now go to page 66, beginning with the question, "Now during the period."

Mr. Westbrook: I can't hear you, counsel.

Mr. Corinblit: Beginning with the question, "Now during the period," and so forth.

(The reading of the deposition was resumed by counsel, as follows):

"Q. Now during the period from the time that you talked to Mr. Landau in New York until the opening of the Paradise Theatre, do you recall having had any other conversations with Mr. Landau or anyone else representing Universal with respect to the Paradise Theatre?

A. I don't recall any further conversations with

(Deposition of Seymour Simon.)

respect to Mr. Landau, and I don't believe I had conversations with anyone else.

Q. Now turning your attention next to RKO, did you, when you were with Mr. Schreiber in New York in April, 1950, see any representative of that company with reference to the Paradise Theatre?"

Mr. Mitchell: I object to the question upon the ground that it is immaterial whether he saw or talked with RKO, which is not a defendant in this action.

Mr. Corinblit: Speaking as attorney for the plaintiff, [1249] your Honor, we have gone into this before. This tells the whole picture of the relationship with the defendants and distributors in New York and Los Angeles. I think heretofore you have permitted that evidence in. On that ground, I think you ought to permit this.

The Court: Overruled.

Mr. Mitchell: May our same objection go to all these questions with regard to RKO?

The Court: Yes, you can have a running objection.

Mr. Corinblit: We will now resume with the deposition.

(The reading of the deposition was resumed by counsel, as follows):

"A. Yes.

Q. Mr. William Zimmerman, is that correct?

A. That's right.

Q. And E. Compton Timberlake?

(Deposition of Seymour Simon.)

A. I don't recall Mr. Timberlake being present. He might have been.

Q. Do you recall anyone else being present?

A. Mr. Schreiber.

Q. And I take it that conference or conversation occurred in Mr. Zimmerman's office? A. Yes.

Q. Now will you tell me as nearly as you recall what [1250] was said by you and Mr. Schreiber, and what was said by Mr. Zimmerman on that occasion?

A. Either Mr. Schreiber or I told Mr. Zimmerman we wanted to get pictures for showing at the Paradise on a first-run Los Angeles, and that we wanted to play the RKO pictures on that arrangement.

Mr. Zimmerman had known Mr. Schreiber before that meeting, and he also knew me. And as I recall it, he treated that request in kind of a joking manner.

He told Mr. Schreiber that Mr. Schreiber really didn't want that, and he ought to forget about that.

Q. Did he say why?

A. I think he said there wasn't any chance of his getting that and he just ought to forget about it and——

Q. Did he say it was RKO policy to license its top features in the RKO Hill Street and Downtown Los Angeles and the RKO Pantages in Hollywood so far as the first-run showing was concerned?

A. I don't recall whether he said that or not.

Q. Do you recall anything else being said about

(Deposition of Seymour Simon.)

the subject of Los Angeles first-run either by you or Mr. Zimmerman or Mr. Schreiber?

A. I think I told Mr. Zimmerman that he had always held himself out to me as a person who wasn't unwilling to depart from established traditions in motion picture [1251] distribution, and I told him that this was a good opportunity to break out with more first-runs in Los Angeles and bring about a result where RKO would make a lot more money from the first-run showing of motion pictures in Los Angeles and from the whole Los Angeles territory than they were making when they confined exhibition to a couple of theatres.

Q. Do you recall either Mr. Zimmerman or anyone else present stating that in view of the RKO people, the theatres that were exhibiting RKO pictures on first-run Los Angeles were in substantial competition with the Paradise, and therefore that RKO would be unwilling to offer a day and date first-run to the Paradise.

A. I don't recall his saying that.

Q. Now after that phase of the conversation, is that all you recall being said about first-run Los Angeles? A. That's all I remember.

Q. Do you recall anything being said about the Loyola?

A. Oh, yes, I believe that we pointed out to him that there had been some RKO pictures that had played the Loyola Theatre first-run. He said that they were pictures that the RKO Hill Street and

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RKO Pantages Theatre in Hollywood did not want to play, so they had sold the pictures to Fox.

Q. They were program pictures, or second feature?
A. Well, I don't remember that.

Q. Do you recall any mention being made of Tim Holt [1252] Western in that conversation?

A. Yes. I think he went into the pictures and pointed out that at least some of the pictures were not pictures of outstanding quality.

Q. Pretty limited box office value?

A. Well, some of them were. I don't recall all the pictures. I think there were a couple of pictures that had a pretty good box office appeal, though.

Do you have a list of the pictures?

Q. I do.

A. Wasn't there a Jimmy Stewart picture in that group?

Q. You have an amazingly good memory.

Mr. Johnston: Did you have a list of pictures with you at that time, Mr. Simon, which had been exhibited at the Loyola Theatre?

The Witness: Mr. Schreiber had such a list, pictures which had been exhibited first-run at the Loyola Theatre during a preceding period of three or four years. I forget how far back the list went.

Mr. Johnston: Did you leave that list with any distributor with whom you talked during this period in April?

The Witness: I don't recall.

Mr. Westbrook: Off the record.

(Discussion had off the record.)

(Deposition of Seymour Simon.)

Q. (By Mr. Westbrook): The Jimmy Stewart picture you [1253] referred to is 'Magic Town'?

A. That's right, 'Magic Town' is the picture.

Q. That played at the Loyola back in 1947?

A. '47, and I pointed out to him that that was a picture that certainly had good box office appeal.

Q. Now I take it that none of the other pictures there fall in the category of the pictures that had good box office appeal, so far as you recall?

A. I don't recall all of these pictures. I am not in a position to say now. Some of them might have been pictures that were pretty good pictures.

Q. Do you recall anything else being said about first-run in the course of your conversation with Mr. Zimmerman? A. No.

Q. After you discussed first-run, did the subject of seven-day availability come up? A. Yes.

Q. Do you recall Mr. Schreiber saying on that occasion that it would be acceptable to him if he were licensed RKO products for exhibition in the Paradise seven days after first-run Los Angeles, provided that the Paradise wasn't required to bid for that run? A. I don't recall his saying that.

He did and I did ask for the opportunity to license their RKO pictures on a seven-day availability after first-run [1254] without bidding, but that was only if RKO was unwilling to license pictures to us on a first-run showing.

Q. Do you recall what Mr. Zimmerman said in that respect?

A. Well, he said that he thought that would

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be pretty hard, because he felt the theatres in Inglewood were competitive to Paradise Theatre, or would be competitive when it was opened, and that if they wanted the opportunity to compete for first-run billing, he did not see how he could exclude them from that opportunity; and that if he did try to exclude them, he would be discriminating against them.

I told him that that was not my view of the law.

My view of the law was that even if two theatres were in substantial competition with each other, the distributor had the right to tell both of these theatres, 'I am not going to sell either of you clearance over the other, but I will permit the two of you to play day and date, and one exhibitor could not object because he didn't have the opportunity to buy exclusivity over the other exhibitor.'

Q. In other words, the distributor had the right to determine how many or how few runs he would license on each availability?

A. No, I didn't say that.

I simply said that my view of the law was that if [1255] two theatres were right across the street from each other, and obviously for that reason in substantial competition, the distributor could say to the two of them, 'I am not going to have bidding between you for an exclusive run. My pictures are available to both of you to play on the same availability.' And as long as he didn't discriminate between them and the film rental terms he demanded, I didn't feel that one of those exhibitors

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would have any sound legal position to maintain that he shouldn't be required to play that way, but he should have the opportunity to buy clearance priority of run over the other theatre; and if he was denied that opportunity, he was being discriminated against, and the antitrust laws were being violated.

I told Mr. Zimmerman that no distributors in my view had to justify a refusal to grant clearance or priority of run in favor of one theatre over another, that the only time they have to justify clearance was when they granted it, and then the burden was on the distributor to justify that the clearance was granted in favor of one theatre over another theatre with which it was in substantial competition.

I also told him that notwithstanding that, I didn't think it would affect the theatres in Inglewood any if the Paradise Theatre played day and date with Inglewood, and I told him that the best way of proving that, instead of sitting around the New York office and speculating about it, [1256] was to license a representative number of pictures to the Paradise Theatre for simultaneous showing with a theatre in Inglewood or anywhere else and see what the effect of that actual experience was.

Incidentally, I might say that I recall expressing the same idea, as I just stated I expressed to Mr. Zimmerman, with regard to a distributor having the right to refuse to grant clearance and permitting two theatres which were obviously directly competitive to play day and date together. I ex-

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pressed the same idea in approximately the same words to Mr. Keogh and Mr. Phillips. [1257]

Q. We will go back to that in just a moment, then.

With regard to your conversation with Mr. Zimmerman, what did Mr. Zimmerman say in response to your statement?

A. Well, he said that wasn't his view of the law.

Q. Do you recall that at the conclusion of that conversation Mr. Zimmerman stated that he would give further consideration to the request made with respect to the seven-day availability.

A. Yes. Before he said that, he said really what I was trying to come there and do is get RKO to set the Paradise Theatre up in a way where it would be isolated from competition, and really I was trying to restrain trade by my request by making it impossible for the theatres in Inglewood to have the opportunity to compete against the Paradise for the license of pictures.

I told him that following my request wouldn't have that effect at all, and if he permitted the Paradise to play day and date with theatres in Inglewood, there would be more competition between them, because then they would compete for patronage and probably it would result in additional price competition and additional services to patrons.

Q. Did Mr. Zimmerman say anything about the fact that day and date runs in Inglewood and Westchester would have the effect of reducing the box

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office return for theatres involved and would thus effect ultimately the return to the [1258] distributor on that availability?

A. Yes, I think he said that.

And I told him that all he was doing was sitting around a big fancy New York office and in a great big tall building speculating about the thing, and that he actually didn't know, and I didn't know, and the best way to find out was on the basis of actual experience; and the way he could get that is by licensing a number of pictures in the way I suggested and then examining the results.

Q. Do you recall mention being made of the fact that as you add day and date exhibits in a given area or locality, that the problem of theatre overhead enters into it, in that on that availability, then the distributor is required to carry additional theatre overhead or as many additional overheads as there are additional runs?

A. No, I don't recall that. But I believe Mr. Zimmerman said, well, they just can't let every theatre play on an early run, and they had to draw the line.

And I pointed out to him that here in Chicago where they had increased the number of pictures playing, the number of theatres playing on the first neighborhood run during the period from 1947 to 1950, that the result had always been that RKO as a distributor was benefited because it got more play dates at early run theatres which played the pictures a week instead of a split week, and that those

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[1259] theatres charged a higher admission price than theatres playing on a later run, and therefore the gross on the RKO pictures was greater, and RKO got a greater film rental when it licensed pictures on a personal basis.

And I believe I also told him that I didn't understand why it was that I had to bring all these cases to try to accomplish that result in Chicago and fight the distributors all the time in order to bring about a result that in the end would mean more film rental to them and a better method of distribution for them.

And I think when we were in the Chicago situation, discussing that, I pointed out to Mr. Zimmerman that the selling plan they had adopted in Chicago actually permitted them to get more first neighborhood runs, second runs in Chicago than any other distributor, and that I thought they had adopted a wiser method of distribution in Chicago than any other distributor had; and I recommended they follow the same approach out there.

Q. What did Mr. Zimmerman say in response to that? A. I think he just listened.

Q. Did he say anything?

A. Didn't respond much.

Q. Did he say in his view Inglewood and Westchester were one competitive area?

A. I don't recall him saying that, but he maintained [1260] that there was substantial competition, or would be, between Paradise Theatre and Inglewood, and it would affect the theatres in In-

(Deposition of Seymour Simon.)

glewood very, very adversely if the Paradise played simultaneously with them.

And whenever he said that I told him he was just sitting up there in that big office, in the RKO office, guessing, but he really didn't know.

Q. Do you recall his saying that the RKO method of licensing his pictures in the Inglewood area afforded RKO one week's playing time on seven-day availability and then additional week's playing time on 14 days availability, so that they actually got a total of two weeks' exhibition in the Inglewood-Westchester area on early runs?

A. I don't recall that.

Q. Now do you recall anything else being said in your conversation with Mr. Zimmerman?

A. Well, Mr. Zimmerman, at the end of the meeting, said that he would like to do what he could for Alex because he loved Alex very much and he thought a lot of him and he was a wonderful guy and he would see what he could do, and he would break his back to try to do something which would be helpful and advantageous to the Paradise Theatre.

Q. Now is that all you recall about the conversation at the meeting?

A. I think Mr. Zimmerman also said he was going to [1261] try to accomplish that, not only because of his fondness for Alex Schreiber, but also because of his fondness for me too.

Q. Anything else? A. That's about all.

Q. All right. I show you now photostatic copies

(Deposition of Seymour Simon.)

of the following letters, which are between you and Mr. Zimmerman.

One dated June 7, 1950, which is Defendants' Exhibit P-6 for identification;

One dated June 20, 1950, which is Defendants' Exhibit P-7 for identification.

I will ask you if you recall sending one letter and receiving the other at or about the dates which they bear.

A. Yes, with respect to P-6.

Yes, as to P-7.

Q. Does Defendants' Exhibit P-7 refresh your recollection in any way with respect to Mr. Timberlake being present at the conversation which you had with Mr. Zimmerman?

A. Well, it doesn't refresh my recollection, but Mr. Zimmerman says he was present, and I certainly wouldn't deny it.

I said before that I wasn't sure, and my recollection is not refreshed.

I had this difficulty, that Mr. Timberlake was with RKO for a while, and then I believe he left RKO and wasn't in the employ of any motion picture company.

And I believe during the period he was [1262] with RKO, I saw him on some occasions, and then I saw him after he left RKO, and then he became employed by Paramount Pictures, and I have seen him since he has been with Paramount.

And it's sort of difficult for me to place the times

(Deposition of Seymour Simon.)

I have seen Mr. Timberlake, but he might very well have been.

Q. His employment with Paramount has been within the last two or three years, is that right?

A. It might be as far back as four years ago. I don't know.

Q. Does Defendants' Exhibit P-7 refresh your recollection in any other respect with regard to the conversation you had with Mr. Zimmerman?

A. No.

Q. I show you next a photostatic copy of the original of a letter on letterhead of RKO Radio Pictures, Inc., under date of August 17, 1950, and ask you if that letter or a copy of it came to your attention shortly after the date which it bears.

A. I don't recall.

Q. Now during the period from the time of your conversation with Mr. Zimmerman in New York until the opening of the Paradise Theatre, did you have any other conversations with anyone representing RKO? [1263]

A. Not that I can recall.

Q. Now you mentioned in the course of your testimony with respect to your conversation with Mr. Zimmerman that you had mentioned to Mr. Keogh, perhaps to Mr. Phillips, I don't know, that in your view the existence of substantial competition did not require a distributor to grant clearance.

Do you recall making that comment as you went along?

A. Yes. I think when I—There is no question pending.

(Deposition of Seymour Simon.)

Q. Did you tell Mr. Keogh and Mr. Phillips in substance what you stated you told Mr. Zimmerman with regard to that particular subject?

A. As to what subject? Let's get the record straight.

Q. The legal proposition that you advanced, that a distributor was not required to grant clearance, even though substantial competition existed.

A. Yes, I think when I testified on Thursday last regarding my conversation with Mr. Phillips and Mr. Keogh, I said there was another theory of distribution that we discussed, and I couldn't remember what it was. And I think that's the line of conversation that our discussion got us into. [1264]

Q. Do you recall what was said by Mr. Keogh or Mr. Phillips in that respect?

A. Well, I don't recall Mr. Keogh said anything about it.

Mr. Phillips took the position, as I recall, if there were two exhibitors in substantial competition, and one of them wanted clearance, Paramount was obliged under the law to give him the opportunity to bid against the other theatres so that he would have an opportunity of getting clearance.

Q. Do you recall Mr. Phillips saying regardless of the legal merit of your proposition, it wasn't good business to follow that suggestion?

A. I don't recall that.

Q. While we are back on Paramount, to be sure we have exhausted your recollection in that regard, was anything said in the course of your conversa-

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tion with Mr. Keogh and Mr. Phillips about the ownership of the Paramount Hollywood and Paramount Downtown Theatres, or the fact that at that time a subsidiary of Paramount had an interest in the operation of those two theatres?

A. I don't recall that.

Q. Now, directing your attention for the moment back to the conversation with Mr. Levinson, was [1265] anything said about the Loyola Theatre in your conversation with him?

A. May I take a look at Exhibit P-8 for identification?

Q. You may. A. I don't recall.

Q. In your conversation with Mr. Landau at Universal, was anything said about the Loyola Theatre?

A. Well, I think actually in all of these conversations, when we talked about getting pictures, we did say that the Loyola Theatre, which was just a couple of blocks away from us, was probably in substantial competition with us, and therefore we would have no objection to bidding against the Loyola Theatre where the picture was licensed to us on the first-run or seven-day availability.

I think that mention was made of the Loyola in the conversations with Mr. Keogh and Mr. Phillips, with Mr. Melniker and Mr. Eisenberg, with Mr. Levinson, with Mr. Landau, and with Mr. Zimmerman, and with Mr. Timberlake if Mr. Timberlake was present.

Q. I take it no one disagreed with that?

(Deposition of Seymour Simon.)

A. No one took exception to that.

Q. Apart from that mention of Loyola, do you recall any other mention of Loyola being made in [1266] your conversations with Mr. Landau?

A. With Mr. Landau?

Q. Yes.

A. No.

Well, yes, I do. I recall Mr. Schreiber pointing out to him that the Loyola Theatre had been playing pictures on first-run for some time and doing very well, and therefore that indicated that that Westchester area was an area where a first-run theatre would do well, and if they permitted an outlet for their pictures on first-run showing at the Paradise Theatre, the Paradise Theatre would do as well as the Loyola Theatre.

That was mentioned by Mr. Schreiber, I believe, in all of these conversations.

Q. Now in your conversation with Mr. Landau, when that was mentioned, do you recall his saying that the Culver Theatre was substantially closer to Westchester than any theatre that was playing pictures on simultaneous exhibition with the Loyola Theatre?

A. I do not recall his saying that.

Q. Do you recall the La Tijera Theatre being mentioned in any of the conversations that you testified you had with these various distributors or the various representatives of distributors in [1267] New York in April, 1950?

(Deposition of Seymour Simon.)

A. It might have been mentioned in the conversation with Mr. Phillips and Mr. Keogh.

Q. Do you recall what was said about it in that conversation?

A. I don't have a strong recollection, but it's possible that they may have said they were considering a selling arrangement under which, if the La Tijera Theatre wants to bid for seven-day showing, the Paradise would not be able to play the picture; but if the bid was won by a theatre in Inglewood, then the Paradise would be permitted to play the picture along with the theatre in Inglewood.

Q. That was in regard to the seven-day availability?

A. Yes. Now instead of that being said in conversation with Mr. Phillips and Mr. Keogh, it might have been said in the conversation with Mr. Melniker and Mr. Eisenberg, or perhaps it was said in both.

Q. Is that all you recall about the La Tijera?

A. That's all I recall.

Q. To refresh your recollection in that respect, I will show you a group of letters dated February 6, 1950, addressed to the local exchanges in Los Angeles, and call your attention particularly to the second sentence in the second paragraph, and ask you if [1268] that refreshes your recollection that either you or Mr. Schreiber stated in the course of your conversations with each of these representatives that the Paradise would desire clearance over the La Tijera?

(Deposition of Seymour Simon.)

A. I do not believe that in any of these conversations did Mr. Schreiber and I state that we would desire clearance over the La Tijera.

As a matter of fact, we indicated we had no objection to the La Tijera playing simultaneously with us, and we——

Q. Is that true with respect to both first run and seven day availability?

A. Well, I don't think there was any conversation about the La Tijera on first run at all.

I think that in the case of some of the others—I don't remember it in the case of Mr. Landau, but it's possible in the case of Mr. Zimmerman and Mr. Levinson—they asked what our view was regarding the La Tijera, and we said we thought they were more competitive in the theatres in Inglewood than with us, and we would have no objection to playing simultaneously with them.

The only theatre that we indicated we thought we should bid against was the Loyola Theatre.

Q. Do you recall saying that you thought that the La Tijera was more competitive with the Paradise than the [1269] theatres in Inglewood were?

A. The view we expressed if the La Tijera was mentioned, was that we thought the La Tijera was more competitive with the theatres in Inglewood than it was with the Paradise.

Q. Going on to the other distributors, do you recall having had any conversation with any representative of Columbia during the course of your visit to New York in April, 1950?"

(Deposition of Seymour Simon.)

Mr. Mitchell: I object to that and all questions with respect to Columbia on the ground the evidence is incompetent, irrelevant and immaterial and outside the issues.

The Court: Same ruling. The objection is overruled. You may have a running objection to this line of testimony.

Mr. Mitchell: Thank you.

(The reading of the deposition was resumed by counsel, as follows:)

"A. Well, I think that I went up to the Columbia office, and I was trying to get hold of Irving Morrass, and he wasn't available.

And I think I saw either Max Rose or Sam Reice—I am not sure which—and told them why I wanted to see Mr. Morrass, it was in connection with the Paradise Theatre, and that was about all. [1270]

Q. You didn't see Mr. Morrass in the course of that trip? A. I don't believe we did.

Q. Do you recall whether or not you had any conversation with any representatives of United Artists in April, 1950?

A. I don't recall any conversation with any representative of United Artists.

Q. Going back to RKO for the moment, between the time of your conversation with Mr. Zimmerman in New York and the time of the opening of the Paradise Theatre, did you have any conversations with any representative of RKO about the Paradise Theatre? A. Not that I recall.

Q. Similarly, did you have any conversations

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with any representatives of United Artists or Columbia during the same period of time?

A. Not that I recall."

Mr. Corinblit: Now, just a minute. I would like to now, speaking as attorney for plaintiff, go to page 93.

Incidentally, while we are on this point, counsel, I take it there will be no problem about our stipulating as to the sending and receiving of all these letters that you identified. [1271]

Mr. Mitchell: Right.

Mr. Johnston: And will there be any problem of the authorship of them, whether Mr. Simon wrote them or someone else?

Mr. Corinblit: No, I am sure not.

(The reading of the deposition was resumed by counsel, as follows:)

"Q. Now do you recall, Mr. Simon, that there was a period of time in the latter part of 1950 and the early part of 1951, during roughly from about October of '50 to the early part of May '50, when you spent a considerable amount of time in Los Angeles in connection with other legal matters?"

Mr. Mitchell: That was May 1951. You misread it.

Mr. Herscher: That's right, May of '51.

Mr. Corinblit: Now, speaking as Mr. Simon.

(The reading of the deposition was resumed by counsel, as follows:)

"A. I spent several weeks there during that period in connection with legal matters.

(Deposition of Seymour Simon.)

Q. Do you also recall that following the opening of the Paradise Theatre, there was a period of approximately three months' duration during which time Marco Wolff and a corporation known as Southside Theatres, Inc., represented [1272] the Paradise Theatre in the buying and booking of motion pictures?

A. I recall that some organization with which Marco Wolff was connected for some period of time after the opening of the Paradise did handle the buying and booking of pictures for the Paradise Theatre.

Now how long a period of time that covered, or exactly when, or the name of the corporation that was assigned that task, I do not know.

Q. And then you recall, do you, that after Marco Wolff ceased his representation of the Paradise Theatre, that an organization known as Exhibitors Service and two individuals, whose names are Harry Rackin and Sid Lehman, undertook to represent the theatre in connection with the buying and booking of motion pictures?

A. I don't know about Exhibitors Service, but I know that Sid Lehman did. Maybe that was the name of his corporation through which he did business.

Q. During the period that Marco Wolff represented the theatre, do you recall having had any conversations with any representative of any motion picture distributor about Paradise Theatre?

A. Well, I don't know exactly during what pe-

(Deposition of Seymour Simon.)

riod Mr. Wolff was connected with the operation of the theatre, so that is a pretty difficult question for me to answer. [1273]

Q. I mean, I will state that his representation ceased on December 4, 1950. I think I may have a letter to that effect.

A. Well, are you sure of the date?

Q. Yes, I am.

A. I will accept your word. I had a conversation with Mr. Phillips.

Q. Do you recall when?

A. It was either in the month of October or November of 1950.

Q. Do you recall where?

A. I believe it was at the law office of O'Melveny & Myers.

Q. In Los Angeles? A. In Los Angeles.

Q. Do you recall who else was present?

A. I believe Mr. Taylor was present.

Q. Mr. Taylor?

A. Yes. And I believe Mr. Smith.

Q. George Smith?

A. Might have been present.

Q. Anyone else?

A. I don't recall anyone else being present.

Q. Now do you recall what was said by you and by the other parties you have mentioned at that conversation? [1274]

A. Yes. I again asked them about the possibility of getting pictures for the Paradise first run Los

(Deposition of Seymour Simon.)

Angeles, and they told me that was out of the question.

And then I asked them about getting pictures on the seven day availability.

They said it was out of the question for the present, but at some later time when they got out of this franchise difficulty, they expected to set up a large number of day and date first runs in Los Angeles. But until they got out of that, their answer was the same as I had previously been given by Mr. Phillips.

Then I asked them about getting pictures on a seven day availability without being required to bid against other theatres, except for the Loyola, and I told them that it was the experience of Mr. Schreiber that the bidding in Inglewood between the United Artists theatre circuit and Fox theatres became quite spirited, and they could afford to submit big bids on pictures in order to take them, and eventually put the Paradise out of business as a competitor; and the result of the bidding going on would eventually be to eliminate the competition of the Paradise Theatre.

I told him I thought that, and was requesting for some period of time to license their pictures to the Paradise Theatre at fair and reasonable film rentals to play simultaneously with theatres in Inglewood and the La Tijera. [1275]

Q. Do you recall any of the persons whom you have mentioned stating that under the Paramount distribution procedure in the Inglewood-West-

(Deposition of Seymour Simon.)

chester area, that the Paradise Theatre could play day and date with any theatre but the La Tijera?

A. Yes, I believe that they had what they called a leap-frog system. I think that's what Mr. Taylor called it.

Q. You mean you recall him making the statement?

A. Yes. But I pointed out that still the Paradise Theatre was required to bid in order to get pictures, and we didn't want to have to be bidding against theatres that were located in Inglewood.

Q. And what was said by Mr. Taylor or Mr. Smith and Mr. Phillips in that regard?

A. I believe they said that the method of distribution that they were employing at that time was all that they were able to do. They wouldn't be able to go beyond that.

Q. Do you recall anything else being said at that meeting? A. No.

Q. Now do you recall any other conversations between the opening of the Paradise and December 4, 1950, which you had with any representative of any motion picture distributor? A. No.

Q. I show you now photostatic copies of two telegrams, one addressed by you to Mr. Melniker, which is Defendants' [1276] Exhibit D-16 for identification, dated November 7, 1950, and the other which is a response to Mr. Melniker's letter, under date of November 10, 1950, which is Defendants' Exhibit D-17 for identification, and ask you if that

(Deposition of Seymour Simon.)

refreshes your recollection as to a conversation with Mr. Melniker.

A. No, it doesn't refresh my recollection.

Q. You don't recall whether or not you did have a phone conversation with him, or that exchange of telegrams?

A. Well, in that period I was talking to Mr. Melniker by long distance telephone fairly frequently. I don't recall any conversation about the Paradise at this time.

Q. Do you recall having had any conversations with Mr. Harry Swerdlow of the law firm of Loeb & Loeb during the period up to December 4, 1950?

A. Yes.

Q. About the Paradise Theatre?

A. Well, I don't know whether it was—I would say it was prior to December 4th, yes.

Q. I take it just you and Mr. Swerdlow were present at that time?

A. I believe so.

Q. Do you recall what was said by him and what was said by you? [1277]

A. Well, I told him what it was that the Paradise Theatre was seeking the opportunity to do; to play first run pictures in Los Angeles, and if they couldn't get that, then the opportunity to play pictures on seven day availability without being required to bid against other theatres.

And he said he would take it up with the distributors he represented.

And I believe that I told him I thought the best thing to do was to have Mr. Schreiber speak to him

(Deposition of Seymour Simon.)

directly, and I arranged for a meeting between Mr. Schreiber and Mr. Swerdlow.

Q. Do you recall arranging for Mr. Schreiber to take Mr. Swerdlow on a tour of the theatres in the Inglewood-Westchester area?

A. I might have arranged for that. I don't have any strong recollection of it now.

I do know that Mr. Schreiber and Mr. Swerdlow may have known each other before I was there. I am not sure. But if they didn't, I arranged for them to meet each other. And if they had known each other, I paved the way for them to become better friends.

Q. Is that all you recall about the Swerdlow conversation? A. Yes.

Q. During that period of time, did you have any conversations [1278] with Mr. William Carmen at the Paradise? A. Who?

Q. William Carmen, Bill Carmen, C-a-r-m-e-n, of the law firm of O'Melveny & Myers?

A. I don't recall any.

Q. Or with Gordon Files of the law firm of Freston & Files? A. I don't recall any.

Q. Or with Leonard Kaufman of the law firm of Mitchell, Silberburg & Knupp?

A. I don't recall that.

Q. Or with Harold Collins of the law firm he was with then, Wright, Peeler & Garrett?

A. I don't recall any.

Q. You have now stated all the conversations you recall having with any representatives of any

(Deposition of Seymour Simon.)

motion picture distributor with regard to the Paradise Theatre prior to December 4, 1950?

A. Yes.

Q. Now do you recall in December of 1950 or January of 1951 having any conversations with any representatives of any motion picture distributor about the Paradise Theatre playing on availability of 21 days after Los Angeles first run closing?

A. No. I don't recall any such conversations.

Q. Do you recall having had a luncheon meeting with Mr. William Zimmerman of RKO in Los Angeles somewhere in that period of time?

A. Yes. It might have been in February of '51. It might have been in January. I don't believe it was in December.

Q. Do you recall who else was present at that meeting?

A. I believe Walter Branson was present.

Q. Was Mr. Alex Schreiber there?

A. I don't believe so.

Q. Was Mr. Harry Cohen there?

A. I don't believe so.

Q. No one else that you can recall other than the three of you? A. No one else there.

Q. What was said at that meeting?

A. I think it was at the Ambassador Hotel.

Q. What was said at that meeting about the Paradise Theatre?

A. Well, I again asked Mr. Zimmerman to try to work out an arrangement to try some first run

(Deposition of Seymour Simon.)

pictures in the Paradise Theatre, and he said that couldn't be done.

And then I asked him again to license some pictures to the Paradise without bidding on a seven day availability so that they would have an opportunity to get some [1280] pictures in there and show what they could do with them and the extent to which their playing pictures simultaneously with theatres in Inglewood or La Tijera would affect those theatres.

Q. And what did Mr. Zimmerman say in response?

A. Well, he said that he liked Alex Schreiber very much, and he liked me very much, and he would do what he could for both of us, but that it was going to be pretty tough for him to persuade anyone to do that.

And he just didn't think it could be done.

However, he would try.

I think then I might have spoken to him about the possibility of getting pictures into the Paradise on a 14-day availability without bidding at a reasonable film rental so that the Paradise Theatre would have product top-rate. My recollection on that is not very clear.

Q. Do you recall in the latter part of 1950 or the early part of 1951 there came a time when the Paradise Theatre adopted the policy of playing on a 21-day availability consistent with the idea of having a strong double feature and being able to obtain

(Deposition of Seymour Simon.)

the picture at lower film rentals than on the earlier availabilities?

A. With the type of bidding that it was being subjected to, and with the type of bids that were being offered distributors by other theatres, the Paradise didn't have [1281] enough pictures to play on a seven day availability, so they did drop back to a later availability.

Q. Do you recall telling Mr. Zimmerman at any time that the Paradise was going to experiment with a 21 day policy, and that if it were dissatisfied with that policy at any time, you would let him know?

A. No. I believe I told Mr. Zimmerman that they were going to experiment, they had no alternative but to go to that policy of playing pictures later. [1282]

Q. Because of the bidding situation?

A. Because of the bidding situation. And that in order to get pictures to keep the house open, they were going to have to play later pictures.

And I told him that I felt that their film rental demands for pictures on that availability had been pretty high, and if the Paradise was to be able to operate successfully playing pictures that far back, their film rentals ought to be reduced considerably.

Q. Now to refresh your recollection in that regard, do you recall that in November of 1950, under the direction of Mr. Alex Schreiber, a survey of the residents of the Westchester area was made on a house-to-house basis by students of Loyola Univer-

(Deposition of Seymour Simon.)

sity by Mr. Schreiber, in which the question was asked whether the residents of that area would desire to see pictures on an early run, or whether they would desire to see the picture two or three weeks later at a low admission price with a strong double feature. A. I don't recall that.

Q. I take it you recall nothing about the results of the surveys? A. I don't.

Q. Do you recall that the responses to the question asked in that survey indicated an overwhelming preference [1283] on the part of the residents of Westchester for the later availability and at a reduced admission?

A. I don't recall anything about a survey. I don't recall ever having been told that a survey of that type was made. I may have been told that, however. That's almost six years ago.

Q. Well, now, have you told us all that you recall about your luncheon meeting with Mr. Zimmerman and Mr. Branson at the Ambassador Hotel in Los Angeles in January or February of 1951?

A. Yes.

Q. Or all that you recall about any other conversation with Mr. Zimmerman up to the time of that meeting? A. Yes.

Q. Now you mention a 14-day availability without bidding as being something that was mentioned along the line in your discussion with representatives of RKO Radio Pictures, Inc.

I show you now a photostatic copy of a copy of a letter addressed to RKO, bearing signature Para-

(Deposition of Seymour Simon.)

mount Theatre Building Corporation, under date of December 12, 1950, which is Defendants' Exhibit P-15 for identification, and ask you if you recall seeing that letter or a copy of it shortly after the date which it bears or at or about that time. [1284]

A. Yes.

Q. Do you recall whether or not that letter was prepared by you? A. I believe it was.

Q. Does that refresh your recollection in any way as to conversations had with representatives of RKO about the Paradise Theatre in December or thereabouts in 1950? A. It does not.

Q. Turning now to a Columbia Pictures Corporation letter, I show you a letter on letterhead of that company, bearing date January 25, 1951, addressed to Mr. Alex Schreiber, signed, Wayne C. Ball, and ask you if that letter or a copy thereof came to your attention shortly after the date which it bears. A. I do not recall.

Q. Do you recall over what period of time the experiment with the 21-day availability at the Paradise Theatre as a consistent policy continued?

A. I do not.

Q. Does the mention of the Columbia picture 'Born Yesterday,' refresh your recollection in that regard? A. No.

Q. I show you now a group of photostatic copies of letters, each of which I believe are substantially identical in form, except that in each case they relate [1285] to different particular motion pictures.

(Deposition of Seymour Simon.)

They all bear the date March 28, 1951, and are addressed respectively as follows:

To Mr. A. R. Taylor, Defendants' Exhibit C-1 for identification;

Thomas J. Aspel, Jr., Defendants' Exhibit D-38 for identification;

Fred Greenberg, Defendants' Exhibit G-3 for identification;

L. W. Marriott, Defendants' Exhibit I-11 for identification;

Harry C. Cohen, Defendants' Exhibit E-1 for identification;

W. B. Pollard, Defendants' Exhibit D-1 for identification.

I ask you if you recall whether or not you prepared either those letters or a draft substantially similar in form.

A. I do not believe I did.

Q. Do you recall when you last had any conversation with any representative of any motion picture distributor about the Paradise Theatre?

Now in that connection, I would like to limit my question to the time September 18, 1951, which is the date of filing the complaint, so I intend to ask when was [1286] the last time prior to that date that you had any conversation with any representative of any motion picture distributor about the Paradise?

A. Except perhaps for some conversations with Mr. Swerdlow, I believe the last one was a conver-

(Deposition of Seymour Simon.)

sation with Mr. Zimmerman and Mr. Branson in Los Angeles.

Q. Do you recall having some conversations with Mr. Swerdlow thereafter?

A. I don't recall any; I may have had.

Q. You have no distinct recollection at this time? A. I do not.

Q. Apart from your conversation with Mr. Zimmerman about the 21-day availability at the Paradise Theatre, do you recall at any time prior to September 18, 1951, having any conversation with any representative of any motion picture distributor about that availability? A. I do not.

Q. I take it that generally speaking your activity with respect to representing the Paradise Theatre in the conversations with various distributors' representatives ceased at or about the time that Mr. Alioto and Mr. Kendrick were retained on behalf of Paradise Building Corporation, is that correct?

A. Yes.

Q. Are you able to fix the date of that? [1287]

A. I believe it was in the latter part of 1951 or the early part of 1952.

Q. Now I call your attention to the date of filing the complaint herein, which you will note from a copy I show you is September 17, 1951—at least, that is the date on the summons—and ask you if that refreshes your recollection as to when Mr. Alioto and Mr. Kendrick were retained on behalf of the Paradise Theatre Building Corporation.

(Deposition of Seymour Simon.)

A. Well, no, it doesn't. I had nothing to do with retaining them.

I do recall that I had discussed with Mr. Schreiber about the feasibility and desirability of retaining counsel on the West Coast, and we discussed the possibility of retaining Mr. Alioto. But still I have no knowledge as to when Mr. Schreiber retained them.

I had nothing to do with retaining them. And when I say I think they were retained in the latter part of 1951 or the early part of 1952, I may be in error.

Q. If I suggest to you that Mr. Kendrick communicated with me about the Paradise Theatre as early as the latter part of April, 1951, would that refresh your recollection in any way as to when they were retained? A. It might have been. [1288]

Q. It might have been that early?

A. That early, yes. But I don't have any independent recollection, because I did not retain them.

Q. I am afraid I have no way of refreshing your recollection with any documents on that.

Now have you told us at this point all that you remember about any conversations had by you with any representative of any motion picture distributor with regard to the Paradise Theatre at any time prior to September 18, 1951? A. Yes."

Mr. Corinblit: Speaking now as attorney for the plaintiff, we have a few more pages to read but I think this is a good place to break.

The Court: How many pages do you?

(Deposition of Seymour Simon.)

Mr. Corinblit: Thirteen pages.

The Court: Ladies and gentlemen of the jury, we are about to take another recess and again it is my duty to admonish you that you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition we will now recess until 2:00 [1289] o'clock this afternoon.

(Whereupon, at 12:00 o'clock noon, a recess was had until 2:00 o'clock p.m. of the same day.) [1290]

Tuesday, July 24, 1956, 2:00 p.m.

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: Yes.

The Court: You may proceed.

Mr. Corinblit: This is a continuation of the deposition of Mr. Seymour Simon, and we will begin on page 111.

(The reading of the deposition was resumed by counsel, as follows:)

"Q. (By Mr. Johnston): Mr. Simon, you are aware of the fact that in this case I am representing Twentieth Century-Fox Film Corporation, National Theatres, and Fox West Coast Theatres Corporation, are you not?

If you aren't, then I shall state to you that I am.

(Deposition of Seymour Simon.)

A. I wasn't aware of the fact that National Theatres and Fox West Coast Theatres had the same counsel as the distributing company, Twentieth Century-Fox Theatres, in this case.

Q. Well, I will state to you that I am representing in this case those three companies which have been named as defendants.

I simply thought it well to apprise you of whom I [1291] represented, if you weren't aware of that.

A. Well, I know that in the case I had out there involving Markoy Corporation—is that the name of it?

Q. That's right.

A. You represented those defendants.

Q. And I do in this case.

And I might state further, I am examining you pursuant to the provisions of Section 43-B of the Federal Rules. A. What do they provide?

Q. They have to do with the examination of adverse or hostile witnesses.

A. Well, I take exception to calling me an adverse or hostile witness. I haven't shown any hostility in the examination that has gone on so far for a few days.

I think, on the contrary, I have shown a complete willingness to be cooperative and to search my memory back over a period of six years and be as helpful as I could be and gave you all the information I could.

Mr. Westbrook: For the record, I have been proceeding under the same section, but on the basis of

(Deposition of Seymour Simon.)

your being an agent or representative of an adverse party, which I think is what Mr. Johnston refers to.

“Mr. Johnston: That’s exactly what I mean. I don’t mean to state that you have been hostile in the common [1292] parlance of the word. I am simply conducting my examination pursuant to the rules which ascribe the method of examination for the examination of a party or his agent.

The Witness: Well, I certainly don’t look upon myself as a managing agent of the plaintiff corporation.

Mr. Johnston: Well, regardless of how you look upon yourself or how I look upon you, I have made my statement as to the appropriate sections of the Rules that I deem I am conducting this examination under.

Q. Now I take it from your previous testimony, Mr. Simon, that you had at the time of your visit to New York in the latter part of April, 1950, with Mr. Schreiber, no conversation with any representative of Twentieth Century-Fox Film Corporation with respect to the Paradise Theatre?

A. You are asking me whether I did have any?

Q. Yes.

A. The answer is, I don’t recall any.

Q. Do you recall whether you and Mr. Schreiber at the time or at about the time of this visit sought an appointment with any representative of Twentieth Century-Fox Film Corporation?

A. I don’t have any recollection of having done so.

(Deposition of Seymour Simon.)

Whether Mr. Schreiber did, I don't know.

Q. Did you at any time up to the period ending September 1951 have any verbal communication of any character [1293] whatsoever with any representative of Twentieth Century-Fox Film Corporation with respect to the Paradise Theatre?

A. Let me ask the question: What was the name of their exchange manager in Los Angeles during that period?

Q. Well, there was more than one. Clyde Eckert was for a period of time exchange manager, and I think for another period Mr. Alex Harrison was the exchange manager.

And I am not sure—just so I can give you all the facts within my knowledge—I am not sure whether Mr. Morrey Seidman may have temporarily acted as such during the period from 1950 through September, '51.

A. I don't recall any conversations with any representative of Twentieth Century-Fox.

Q. Now did you have any conversations with any representative of Fox West Coast Theatres Corporation at any time up to and including September 1951 with respect to the exhibition of motion pictures at the Paradise Theatre?

A. I had one conversation, but whether it was before or after that September date I am unable to say.

I am inclined to believe it was after that date.

Q. Your best memory at this time is that it took

(Deposition of Seymour Simon.)

place some time after September of 1951, is that right? A. Yes.

Q. Well, so that the record may be complete, will you state with whom you had such a conversation, the persons present, [1294] and what was said?

A. The conversation was with Mr. Charles Skouras.

Q. And who were present in addition to Mr. Skouras and yourself? A. I don't recall.

Q. Do you recall where the conversation took place? A. In his office.

Q. And what was said with respect to the Paradise Theatre at that conversation?

Mr. Westbrook: Before you go into that, just to aid in fixing the time, did that conversation occur during the period when you were in Los Angeles in connection with other legal matters to which we previously referred? [1295]

The Witness: It occurred while I was in Los Angeles in connection with anti-trust action instituted by Markoy Corporation.

Mr. Johnston: Q. Can you place that period now, Mr. Simon, with any more particularity as being before or after September 1951?

A. I believe it was after, because it was at the time that Markoy case was drawing to a close, and I think that was after September 1951.

Q. Now may I ask you again this question, and covering the period from the time of your retention by Mr. Schreiber for the Paradise Building Corporation up to the period through September of 1951:

(Deposition of Seymour Simon.)

Do you recall having any conversation or being present at any conversation with any representative of Fox West Coast Theatres Corporation or National Theatres Corporation with respect to the Paradise Theatre?

A. Other than the one I have mentioned?

Q. Well, I think we have eliminated it as being subsequent to the period in question.

A. I said I wasn't sure. I thought that it was——

Mr. Westbrook: Off the record for a moment.

The Witness: ——but I wasn't sure.

(Discussion had off the record.) [1296]

The Witness: The question, as I recall it, was prior to——

Mr. Johnston: September of 1951.

The Witness: Now I will continue by saying that I won't concede it's eliminated, because I am not sure that that conversation didn't take place prior to the end of September, 1951.

Mr. Johnston: Q. I take it that you placed the conversation in relation to your activities in relation to your activities in concluding a case that has been popularly referred to as the Markoy case?

A. It might not have been at the very end of the case, but it was at a point where settlement negotiations were developing in that case.

Q. Have you any record available here which would enable you to fix the time of that conversation with Mr. Charles Skouras?

A. I do not have them available here in my office.

(Deposition of Seymour Simon.)

Q. Now putting apart the conversation with Charles Skouras, which you have referred to, did you have or were you present at any other conversation with any representative of Fox West Coast Theatres Corporation or National Theatres Corporation with respect to the Paradise Theatre?

A. I don't recall any. [1297]

Q. Did you have any written communication of any sort with Fox West Coast Theatres Corporation or National Theatre Corporation or any representative thereof with respect to the Paradise Theatre from the period of your retention by Mr. Simon?

A. Mr. Schreiber.

Q. Mr. Schreiber, I beg your pardon. Through September 1951.

A. I have no recollection of any such communication.

There was a written communication with Twentieth Century-Fox Film Corporation, but I don't recall any with Fox West Coast or National Theatres.

Q. When were you first retained by Mr. Schreiber for the Paradise Theatre Building Corporation in connection with the Paradise Theatre?

A. Well, it was prior to May, 1950. I don't know how long prior.

Q. Now I show you a copy of a letter dated April 17, 1950, addressed to Twentieth Century-Fox Film Corporation, which I will ask the Reporter to mark as Defendants' Exhibit SS-4 for identification, and ask you if you sent the original of that

(Deposition of Seymour Simon.)

letter to the addressee indicated thereon at about the date it bears? A. I did. [1298]

Q. Now I show you also a copy of a letter bearing date April 28, 1950, and having on it the letterhead of Twentieth Century-Fox Film Corporation, addressed to Mr. Seymour Simon, and apparently sent by A. W. Smith, Jr., which I will ask the Reporter to mark as Defendants' Exhibit SS-5 for identification, and ask you if you received the original of that document? A. Yes.

Q. At the time of your drafting the letter, which has been marked as Defendants' Exhibit SS-4, did you have before you, Mr. Simon, a memorandum or a copy thereof which has been marked as Defendants' Exhibit SS-1? A. I do not recall.

Q. Now, Mr. Simon, I am going to show you Defendants' Exhibit E-1 for identification and ask you if you prepared for transmission to Twentieth Century-Fox Film Corporation a letter similar to, in substance, E-1?

A. That question has already been asked and answered.

Oh, excuse me. Will you read the question?

(The pending question was read.)

Well, I prepared a draft of a letter and delivered it to Mr. Schreiber and instructed him to [1299] send it to the film companies in Los Angeles.

Now, who he sent it to, I did not know at the time.

Q. Do you have any knowledge of his having

(Deposition of Seymour Simon.)

sent such a letter similar in form to E-1 to Twentieth Century-Fox Film Corporation?

A. Have I ever been shown a copy of such a letter addressed to Twentieth Century-Fox?

Q. I know of none in existence.

I am asking for an answer.

A. I have no knowledge; I have no knowledge."

Mr. Corinblit: Speaking now as attorney for the plaintiff, we will not offer anything until over on page 121, beginning with: "While Mr. Westbrook is searching——"

Mr. Johnston: Just a minute, please, Mr. Corinblit.

Mr. Corinblit: Yes.

Mr. Johnston: I think you should read the intervening portion. If you don't, I will feel obliged to read it myself.

The Court: Suppose you read it.

Mr. Corinblit: If that is to be offered, this is a matter of privilege, and therefore we would make an objection on the ground of privilege so your Honor won't have to rule on the question. [1300]

Do you offer that part of the deposition, Mr. Johnston?

Mr. Johnston: I think that should be read, yes. Where did you stop?

Mr. Corinblit: "I have no knowledge; I have no knowledge."

That is at the bottom of page 120.

The Court: Let me see it.

(Deposition of Seymour Simon.)

Mr. Corinblit: The question begins where it is marked, your Honor, right after that question.

(Handing document to the court.)

The Court: The objection is overruled. You may read it.

Mr. Corinblit: Thank you.

Mr. Johnston: Do you want to read it?

Mr. Corinblit: Yes.

(The reading of the deposition was resumed as follows:)

“Q. Did you give Mr. Schreiber any specific instruction with respect to sending such a letter as Defendants’ Exhibit E-1 to Twentieth Century-Fox Film Corporation according to your recollection now?

A. Well, I think you are now going into the area of attorney-client communication, and I think I should refuse to answer that without authority from my client to do so.

Q. I might say, Mr. Simon, that you have already [1301] testified that you made a suggestion to your client with respect to the contents of a proposed letter which I consider would constitute a waiver of any privilege, if one does exist in this particular problem.

Mr. Westbrook: Beyond that, you have just testified that you suggested to him or instructed him, rather, to send it to the film company.

The Witness: I stand by the statement I have made. I am not going to answer that question.

Mr. Johnston: Q. While Mr. Westbrook is

(Deposition of Seymour Simon.)

searching for documents I asked him about, I will show you two letters, one marked Defendants' Exhibit I-2 for identification, and the other one marked Defendants' Exhibit I-1 for identification, and ask you with respect to each of those letters whether you had any part in drafting the letter or a letter similar in form for transmission to the addressee therein indicated. A. I don't recall.

Q. You have no recollection one way or the other whether you had any hand in the drafting of these two exhibits which I have shown you?

A. No. [1302]

Q. Now I show you what has been marked Defendants' Exhibit D-13 for identification and ask you if you drafted or assisted in the drafting of any similar communication addressed to or to be addressed to Twentieth Century-Fox Film Corporation?

A. I drafted this form and sent it out to Mr. Schreiber, or gave it to him if he happened to be here at that time—I don't recall which. But the addressee was blank, as I have testified before. It was a form to be used as a communication with several film companies.

Q. Did you make any suggestion with respect to what film companies a letter in the form of Defendants' Exhibit D-13 should be sent out?

A. Well, I recall that I made a suggestion with regard to RKO, because there were additional paragraphs in the letter that went to RKO.

Q. Other than that, you made no specific sugges-

(Deposition of Seymour Simon.)

tion, I take it, as to what film company this form of letter should be sent? I am referring again to Defendants' Exhibit D-13? A. I cannot recall.

Q. Now, I asked you earlier whether you had any conversation with any representative of Twentieth Century-Fox Film Corporation with respect to the exhibition of pictures at the Paradise Theatre, and I believe your testimony was that you recalled none or did not have any. [1303]

Now I ask you if you were present at any conversation with any representative of Twentieth Century-Fox Film Corporation with respect to the Paradise Theatre?

A. I don't recall being present at any such conversation.

Mr. Johnston: Q. Mr. Simon, during your retention by Mr. Schreiber in connection with Paradise Theatre and throughout the year 1951, did you have or were you present at any conversations or conversation with any exhibitor or exhibitors in the Los Angeles area other than Fox West Coast Theatres Corporation or National Theatres Corporation with respect to the Paradise Theatre? And by that I mean Griffith-Coleman, United Artists theatre circuit. A. What was the first one, who?

Q. Griffith-Coleman or any others. I don't limit it to those two.

A. I was never present at any discussion with Griffith-Coleman or United Artists Theatre Circuit relating to the——

Q. Paradise Theatre.

(Deposition of Seymour Simon.)

A. —Paradise Theatre.

What period did that question cover?

Q. I am covering the period from the time you were retained by Mr. Schreiber or his company, which you place as being some time before May of 1950, up to September of 1951.

A. Except I add to that question: A conversation with [1304] a man whose name I believe was Stein, who is the manager of the United Artists theatre circuit in Los Angeles; except I don't know whether that conversation was before or after that September date.

Q. Do you recall who was present at that conversation in addition to yourself and Mr. Stein?

A. I don't recall that the man's name was Stein. I think there was a Stein.

Q. There was or is a Fred Stein who was connected with the organization?

A. That's right, then. I don't recall who else was present.

Q. And where did that conversation take place?

A. I believe it took place in Mr. Stein's office.

Q. Now is that the only conversation that you can recall that you had with any exhibitor regarding Paradise Theatre from the period of your retention by Mr. Schreiber through September, 1951, assuming that this did occur before September, 1951?

A. With any exhibitor?

Q. Any exhibitor? A. Where?

Q. In the Los Angeles area.

A. I had conversations with exhibitors regard-

(Deposition of Seymour Simon.)

ing the Paradise Theatre and Mr. Schreiber. [1305]

Q. With what exhibitors?

A. My conversations with Mr. Albert Levoy.

Q. When did that conversation take place?

A. I spoke to Mr. Albert Levoy on that subject on many occasions.

Q. Can you place the dates of those occasions?

A. I again think that you are getting into the realm of attorney-client discussions, and for that reason I refuse to answer that question.

Q. Now do you recall discussions with any other exhibitor than the ones you have mentioned on this same topic and during this same period?

A. Well, the other conversation that I previously mentioned with a representative of Fox West Coast, but there, again, I am not sure if it's within the period——

Q. I am referring, Mr. Simon, to ones you have not previously alluded to.

A. No, not that I can recall.

Q. Did you have any conversations——

A. Oh, wait, wait; yes, yes. I had a conversation with Mr. Marco Wolff.

Q. At what time, Mr. Simon?

A. That was in the latter part of 1950.

Q. And who was present at that conversation in addition to yourself and Mr. Marco Wolff? [1306]

A. Mr. Schreiber.

Q. What was said on that occasion?

A. Well, there, again, from my viewpoint, it was a communication between attorney and client.

(Deposition of Seymour Simon.)

Mr. Marco Wolff at that time was acting as an agent for the plaintiff corporation, and we discussed things in which I was acting as counsel for the corporation, and I don't think I ought to go into that.

Q. Now have you given all of the conversations—I should say, have you mentioned the existence of conversations with exhibitors regarding the Paradise Theatre from the period of your retention by Mr. Schreiber through September, 1951?

A. That question is with exhibitors in the Los Angeles area?

Q. In the Los Angeles area, yes.

A. I don't think I know any other exhibitors in the Los Angeles area.

Q. So that your answer to my question would be that you wouldn't have had any such conversations?

A. None that I can recall.

Q. Did you have any conversations with any buying or booking agents for exhibitors in the Los Angeles area about the Paradise Theatre for the period from May of 1950 through September 1951?

A. Not that I can recall.

Mr. Johnston: I have no further questions.

Mr. Corinblit: Speaking now as attorney for the plaintiff, I would first like to mark for identification as plaintiff's exhibit next in order a play-off of Fox West Coast Loyola Theatre from October 1946 to September 1951. I will hand copies to counsel for the purpose of having them checked so that they can stipulate, if they desire to.

The Court: It may be marked for identification.

The Clerk: 53 for identification.

(The exhibit referred to was marked as Plaintiff's Exhibit No. 53 for identification.)

Mr. Corinblit: Also, we will mark for identification at this time a play-off of Paramount pictures from 1945 to September 1951, which we have prepared, and hand copies to counsel so that perhaps we may reach a stipulation on those matters.

The Court: It may be marked for identification only.

The Clerk: 54 for identification.

(The exhibit referred to was marked as Plaintiff's Exhibit No. 54 for identification.)

Mr. Corinblit: For the purpose of the record, let [1308] the record show we served upon counsel a copy of a memorandum which we filed with your Honor yesterday referring to the offer of proof and memorandum of law with respect to the admissibility of evidence as to the Westchester-Inglewood matter.

The Court: The record may so show. [1309]

Mr. Corinblit: The plaintiff will call Mr. Alex Schreiber.

ALEX SCHREIBER

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Will you state your full name, please?

The Witness: Alex Schreiber, A-l-e-x.

Direct Examination

Q. (By Mr. Corinblit): Mr. Schreiber, where do you reside?

A. 10776 Wilshire Boulevard, West Los Angeles.

Q. And are you the president of the plaintiff corporation, Paradise Theatres Corporation?

A. I am.

Q. And how long have you held that office?

A. Since we organized the corporation in, I believe——

Q. I think the date is about 1949?

A. I was going to say '49 or '50.

Q. Mr. Schreiber, how long have you been in the theatre business?

A. I have been in the theatre business since I was 18 years old. I started on January 1, 1919.

Q. Will you tell us, Mr. Schreiber, what was the [1310] first theatre that you were connected with in any way? How old were you at the time?

A. The first theatre I was connected with was the Blackstone Theatre in Detroit, Michigan. It was a 288-seat house, downtown at Michigan and Griswold.

I went to work for my brother. That was immediately after the first World War ended.

(Testimony of Alex Schreiber.)

Q. And how long were you connected with that theatre?

A. Until 1925, some time in 1925.

Q. And in your connection with that theatre, what duties and services did you perform?

A. Well, I was hired to be a doorman, be assistant manager, cashier, bookkeeper, assistant janitor, candy boy, poster clerk.

I repaired the seats; I repaired the carpets when they needed to be repaired.

I went to the film building to pick up the advertising or deliver advertising. I went to the bank and did anything and everything that had to be done around the theatre.

Q. How about acting as assistant operator on the machines?

A. Well, when the operator wanted to go out for lunch or the restroom, I went up and handled the projection equipment.

Q. And after that theatre, the Blackstone Theatre which [1311] you said was 288-seat theatre in Detroit, what other theatres were you connected with in any way in the city of Los Angeles, giving us the approximate dates?

A. Well, from about 1919 to about 1922 or '23 my brother made a lease on both the Victoria and the Wolverine Theatre on Michigan Avenue near the depot.

We operated that theatre for a short period of time, and then we made a deal to lease the Frontemac Theatre on Harper and Frontemac. That was

(Testimony of Alex Schreiber.)

a neighborhood theatre. That was in about 1924, I believe that was, and then in 1925 when I left the employment of my brother, I went to the Frontemac Theatre and opened that theatre myself.

Q. Thereafter what were some of the other theatres that you were connected with?

A. After the Frontemac Theatre I made a lease on the Plaza Theatre on East Jefferson, also a neighborhood theatre of about 750 seats.

After the Plaza Theatre I made a—I bought a half interest with Mr. John Nebus in the Dawn Theatre on Gratiot Avenue.

Mr. Nebus took sick and he was looking for somebody to run his theatre, and he preferred to sell an interest in the theatre.

I bought that interest from Mr. Nebus with the understanding that I would have full charge of setting the policy, [1312] remodeling the theatre and doing whatever was necessary to make it a success.

After exactly one year Mr. Nebus felt a lot better and he wanted to get back in active theatre business, and I disposed of my 50 per cent to Mr. Nebus.

After the Dawn Theatre I believe I became interested in the Capitol Theatre on West Berner Highway. They called it Spring Wells. That was also a neighborhood theatre of about 900 seats.

I believe we made that deal in the end of 1931, during the depression, and we remodeled that thea-

(Testimony of Alex Schreiber.)

tre and we opened in September, I believe September 2, 1932.

And then I believe I disposed of my interest in the Plaza Theatre and the Dawn Theatre and the Frontemac Theatre and then I remained with the Capitol Theatre and the Blackstone Theatre and the Loop Theatre. I forgot to mention the Loop Theatre. I acquired that theatre—that was about 530 seats in downtown Detroit at Cass and Michigan. I acquired the lease on that theatre about 1927 and we opened on February 18, I believe, 1928.

And after we had the Capitol and the Loop Theatres—they were the two theatres I remained with and then after that I believe my associates and myself made a lease in 1935 for the Rialto Theatre in Flint. That was another 530 some odd seat theatre downtown Flint. [1313]

After that theatre, the same four associates of mine in the Rialto Theatre, Flint, we made a lease in the Rialto Theatre, Three Rivers, Michigan. That was a small town with about three or four thousand people, maybe six thousand people. That was less than 500 seats, I believe. It was a small theatre in this town. The other theatre in the town was a Butterfield theatre. There was just the two theatres.

Then made another lease, my associates and I did, in the Nortown Theatre, Flint. That was a neighborhood theatre of 1200 seats in Flint.

Then we made a lease, my same associates and myself, in the Ritz Theatre in Flint.

Prior to this '35, I made a lease on the Times

(Testimony of Alex Schreiber.)

Square Theatre in Detroit, which was directly across the street from our Loop Theatre, which was a small theatre. We opened that theatre on October 19, 1929. We had that theatre—well, we had that theatre about less than two years. We opened it up just—we opened it up, I think, October 9 or October 10, and October 13, I think, was the stock market crash. So from that day on we had a lot of trouble with that theatre. It was a brand new theatre, big theatre, big expenses, and we just couldn't keep it open. So we lost that theatre. Turned it back to the landlord in, I believe it was, 1931.

Then in 1936, I believe it was, two of my [1314] associates made a deal for the Center Theatre on Woodward and the Boulevard, which was formerly a newsreel theatre, Trans-Lux Theatre. They operated it for a while, and they wanted me to join with them, so I took an interest in that theatre.

Then that created hard feelings with the people that had the theatre across the street, and they built a theatre near this Capitol Theatre, and then they bought us out of the Capitol Theatre on Vernor Highway, and we bought them out in the Norwood Theatre, which was across from the Center. In other words, rather than scrap around with one another, they took one theatre and we took the other. It was a friendly relationship.

After that, in about 1941, I made a deal on the Strand Theatre, Cincinnati. That was downtown Cincinnati. About 1300 seats.

(Testimony of Alex Schreiber.)

In addition to that theatre, we made a lease, my associates and myself made a lease on the Lancaster Theatre in River Rouge, and the Grande Theatre in River Rouge. We also made a lease on the Del Rey Theatre in 1941 in River Rouge. That was around 600 seats. The Grande was around 1,000 seats. The Lancaster Theatre was about 1800 seats. The Lancaster is in River Rouge, a suburb of Detroit. That was 1800 seats. Then we built—no, we didn't. We leased from my associates, one of my associates' brother-in-law, the Rouge Theatre, a 900 seat theatre in River Rouge. [1315]

Then two of my other associates leased two theatres in Mount Clemens, Michigan, which is a suburb of Detroit, 25 miles from the city hall of Detroit. We took an interest in those two theatres in Mount Clemens.

Later on, a year or two—no, several years later we built, my associates and myself built the Gratiot Drive-In Theatre. That was a drive-in theatre with a capacity of around 1,000 or 1100 automobiles.

Then a couple of years after that, members of my family and some relatives, and I believe two outside people, and myself, we leased the ground and built the Grand River Drive-In Theatre out Grand River, out near Farmington, a suburb of Detroit. That was also around 1,000, 1100 cars.

After the two drive-ins—prior to the two drive-ins, in 1936, we bought an automobile agency in Trenton, Michigan, that is about 25 miles from De-

(Testimony of Alex Schreiber.)

troit, and we converted the garage into a 700 seat theatre.

In about 1938, my associates and I acquired an interest—a lease, rather, of the Rialto Theatre in Wyandotte, another suburb of Detroit, of less than 600 seats.

Then we acquired an interest in the Majestic Theatre in Wyandotte, which was also about seven or eight hundred seats, I believe, and we built a 1400 seat theatre in Wyandotte, so that gave us three theatres in Wyandotte.

Of course, we disposed of interests in the [1316] Strand Theatre to the New York Tele-News people. They bought an interest and ran the theatre, and then they bought us out. They took full possession of that theatre in Cincinnati.

Then I became interested with one of my associates and few other people that I knew in buying the Lyceum Theatre and office building in Minneapolis. This was a legitimate theatre where they played legitimate stage shows, and we tried to get movies first run, because it was practically a downtown theatre, in between the stage show policy in Minneapolis. We recently sold the theatre and building in Minneapolis. We don't have that theatre any more, or the office building.

Q. Let me stop you there, Mr. Schreiber. With respect to the theatres which from time to time you have had an interest in, what in general were your

(Testimony of Alex Schreiber.)

duties and responsibilities, that is, what did you do with respect to those theatres?

A. Well, in all those theatres I was responsible for the policy, the buying and supervising of buying pictures, booking the pictures, hiring the important key people of each theatre, setting up the advertising schedule for each theatre, buying equipment, in charge of remodeling the theatres, buying whatever necessary carpets or booth equipment or theatre seats or handling the decoration. Of course, I had a general manager with me and I had [1317] several supervisors with me, but everybody worked under me, with the exception of Mount Clemens. Two of my associates, they were in charge of Mount Clemens, but I counseled with them. We had quite a few meetings together deciding the policy and purchasing of pictures and remodeling of theatres.

In the Nortown Theatre in Flint, Doc Eisman, the associate who had 50 per cent interest, he took charge of the theatre at Flint. We governed and watched the booking and buying of the pictures in Detroit, because Flint was served pictures from Detroit. [1318]

Q. All right. Now, just to get this matter out of the way. During the period from September or August of 1950 to September 1951, the period that you operated the Paradise Theatre, in what theatres in Detroit did you continue to have an interest during that period. Do you remember that?

A. I didn't have very many theatres left then.

(Testimony of Alex Schreiber.)

Q. Now, when did you first become interested in coming to Los Angeles for the purpose of going into the theatre business?

A. Well, the first trip to California was made with my wife and a doctor friend. I believe that was in 1941.

My wife wasn't well and the doctor recommended that I take my wife for a long drive and go to California.

My wife was a little nervous about making that long distance without the help of a doctor, and the doctor wanted a vacation, so he said he would go along with us. And then she had nothing to fear, so we drove to California.

And when Mrs. Schreiber came here, during that period she felt quite, much better and quite relieved that she had found a place where she was at ease.

And then each year after 1940 we came West either once or twice a year, because she felt so much better on the West Coast than she did in Detroit.

Q. Now when, calling your attention to the period around 1946 or '47, what happened then with respect to your [1319] interest in coming to Los Angeles or going into business in this area?

A. Well, it was around '46 or '47. Mrs. Schreiber said that she felt so much better when she would visit the West—we made trips to—we stopped off in Phoenix and stopped off in Tucson for a short time—Palm Springs and Los Angeles, and she felt the climate in Los Angeles was much better for her.

(Testimony of Alex Schreiber.)

We had some friends that we knew from Detroit living in Los Angeles and she told me that she wanted to move to California, that she felt her health was very important and she just wanted to move from Detroit and come to California. She preferred Los Angeles.

So in 1947 I started to look around for locations for theatres on the suggestion of friends of mine that I had known in Detroit, figuring that if I did move to California, naturally, the only business I knew was the theatre business. I wanted to get interested in some theatres to make a living and to continue my livelihood, so I started looking for locations with the help of several friends of mine from Detroit and friends that I had met here through the Detroit acquaintances.

Q. Now, would you describe for us, Mr. Schreiber, when you became interested in coming to this area, the areas surrounding the city of Los Angeles—the Los Angeles [1320] area that you visited, that you drove around and investigated, will you describe those for us?

A. Well, the friend of mine from Detroit and a friend of his whom he introduced me to, started to show me all the areas that they thought would make good theatre locations and thought that I would be interested.

They drove me in downtown Los Angeles. We went to Hollywood. We went up and down Hollywood Boulevard. We went to the Wilshire area. We

(Testimony of Alex Schreiber.)

drove out to Westchester. We drove to Culver City.

We drove to Santa Monica. We went to Hermosa Beach, Manhattan Beach, Redondo Beach.

We went into Hawthorne. We went into Inglewood. We went into the Valley.

Q. You are talking about the San Fernando Valley?

A. The San Fernando Valley. Up Laurel Canyon Boulevard and went up Lankershim Boulevard.

We went to Burbank. We went to Encino. We went to Overhill and Slauson area and I believe—I am looking at the map. It is quite a distance. I am trying to recognize some of the areas, but I think I have pretty well covered the majority of the areas that I had examined with these friends.

Q. How about Pacific Palisades?

A. Yes, I did. I went up there several times with my [1321] friends from Detroit and once I believe with Mr. Reeves Espee, who was contemplating building a theatre in Palisades because he had a location and he wanted my opinion whether I thought that location would be a good location for a theatre.

That was prior to the building of the Bay Theatre that is now operating in Pacific Palisades.

Q. Now, who were the people and what were their—what kind of background did they have? What were they that you counseled with with respect to examining possible theatre locations? Just give us their names and who they were.

(Testimony of Alex Schreiber.)

A. Well, Sam Decker was the man that I had known from Detroit. He operated an independent distribution office for independent pictures—those small pictures that these other men that were up here on the stand testified to—small pictures. He had a branch office or a franchise to operate independent pictures.

Mr. Decker used to be a booker for Pathe Film in Detroit, and Mr. Decker introduced me to a man named Bud Silverman. Bud Silverman was a theatre owner that was operating a theatre in Santa Monica and I believe Mr. Silverman told me at one time he worked or, he was associated with Warner Bros. in Ohio. I just can't recall. It may have been Findlay, Ohio. I am not sure. It was a [1322] small town in Ohio. He either worked for Warner Bros. or was associated with them.

Mr. Decker and Mr. Silverman took me to practically all of these places and they made recommendations.

I remember also at one time driving out with Jack Broder. Jack Broder is a former Detroit theatre operator who moved here and who secured at a later date the Real Art Pictures, which were the re-issues of Universal Pictures over a period of ten years.

He made some sort of tie-up with Universal to release—to release, re-release all of the Universal Pictures that were made for a period of ten years. And I also spoke to Mr. Joe Baley, who was op-

(Testimony of Alex Schreiber.)

erating a theatre on Hollywood Boulevard, who formerly was my manager at the Loop Theatre in Detroit.

And then there was a Mr. Bill Flemion who was also an independent distributor formerly from Detroit, that was associated in the same offices with Mr. Decker.

Q. Now, did you examine particularly the area known as the Westchester area—that is, did you finally come to examine that area?

A. I did. I made quite a number of trips out there. I would say that I made at least four trips prior to buying the property that the Paradise Theatre is on, with Mr. Silverman and Mr. Decker.

Q. And did you discuss with anyone at that time the business development in that area and what was happening there in terms of growth and development?

A. Yes. I talked to Mr. Decker and Mr. Silverman about that. They insisted——

Mr. Mitchell: Can we eliminate the hearsay conversations, your Honor? I object to conversations with Mr. Decker and Mr. Silverman on the ground they are hearsay.

The Court: You haven't objected up to this time.

Mr. Mitchell: That is right. He hasn't started to tell what they said. He has just been going around the community and no harm in that, but when he comes to telling what other people say, it is hearsay.

(Testimony of Alex Schreiber.)

The Court: You may object to hearsay statements.

Mr. Corinblit: This is only for the purpose of showing the background of his investigation.

The Court: That may be true, but the hearsay rule still applies.

Mr. Corinblit: All right, your Honor.

Q. Now, if you will just tell me, Mr. Schreiber, just anyone else to whom you talked about the business development and not what they said to you, because Mr. Mitchell has objected to that as being hearsay. Just whom you talked to about the business development in the Westchester area. [1324]

A. Not with Mr. Decker?

Q. Other than Mr. Decker. Was there anyone else?

A. There was Mr. Silverman who was along with Mr. Decker.

Q. Anyone else connected with the real estate development in that area?

A. Yes, Mr. Hayden Worthington who was in charge of the real estate for the Frank Ayers & Sons, developers of Westchester.

Q. Now, talking about what you saw and not what anyone told you, what did you observe concerning the business development in the Westchester district?

A. On several occasions I drove out in the evening and I watched the business at the Loyola Theatre from the curb, parked in my car. I noticed that

(Testimony of Alex Schreiber.)

they were doing a very big business. I noticed that they were playing pictures two weeks and three weeks—the same program.

I also went out on a Saturday and Sunday afternoon or either one of those days, and I watched the business that the Loyola Theatre was doing as far as children were concerned at the matinees.

I also, in making an investigation of that area, stopped at gasoline stations—stopped children—stopped at gasoline stations and inquired if there were any theatres in that particular locality where that particular gasoline [1325] attendant went to the movies.

I also stopped in the drug stores and inquired from the clerks about the theatre, the Loyola Theatre, and where they go to the movies.

I stopped children near the schools and asked them what theatres they go to on Saturday or Sunday matinee. I made a pretty thorough check of Westchester and in talking to Mr. Worthington he told me—— [1326]

Mr. Mitchell: Wait a minute.

The Court: You can't testify to what people told you. Just testify what you did. You can't testify to what people told you.

Q. (By Mr. Corinblit): Just leaving for a minute your examination directly of the theatre business, that is the Loyola particularly, what did you observe as far as what you saw with respect to other business development in the Westchester area?

(Testimony of Alex Schreiber.)

A. Well, I circled around in my car, and I don't know whether I took Mrs. Schreiber with me or not, but I did circle around with my—no, not my car, with Mr. Decker in his car, or if I had rented a car, which I did many times when I came to Los Angeles, I rented an automobile, and I went up and down the side streets of Westchester, Sepulveda Boulevard, and I went over in the area where they were putting on the new tract homes, and I noticed that the whole area was growing very fast, that it had a lot of new homes there, homes that are typical homes of people that would go to theatres.

I went around the Loyola College. I was pleasantly surprised at the size of it. I drove around to the various schools. At times I was around a school when they had a recess period or lunch period, and I was convinced there were a lot of children around there, and children usually make the theatre business, because when children want to go to [1327] to the show, they take their parents with them.

The Court: What about the business district? What did you notice about the business district?

The Witness: The business district there, I went into Thrifty Drug Store and they were doing a very good business. Of course, you say I can't testify to what Mr. Worthington told me about the business.

The Court: No. How many business establishments were down there?

The Witness: There was the Loyola Theatre at Manchester and Sepulveda.

(Testimony of Alex Schreiber.)

They were building a restaurant called, I believe, the Virginia Boys Restaurant, that was being built.

There was the Security National Bank there. There was a children's store, several children's stores, several ladies' stores. In fact, I know distinctly Joel's Department Store was there, because a lady we knew from Detroit was working there.

On the opposite side of the street there was an announcement that a big department store was going to go up there on the corner of La Tijera and Sepulveda. There was the Westchester Food Market. They were building a big, supposed to be on the order of the Farmers Market, at the southwest corner of Will Rogers and Sepulveda.

Then there was a gas station down at the far end of [1328] the business area.

I believe that's all the business property there was at that time.

Q. (By Mr. Corinblit): This time you are talking about, Mr. Schreiber, is 1947, 1946 and 1947, when you were investigating, is that right?

A. The end of 1946 and 1947, yes.

Q. Now, I take it you made some inquiry as to what the prospects were for other businesses coming into the area, is that right, that is, what the plans were?

A. Yes. I went down and noticed all the factories down at Century Boulevard, from there north and from there south. I knew if those factories were there, there was a lot of people working there, and if they were working there, they lived near these

(Testimony of Alex Schreiber.)

factories. They would all be future patrons of a theatre.

Q. Finally there came a time, did there not, when you purchased the land upon which the Paradise Theatre is built, is that correct?

A. That's right.

Q. Now, after you bought the land—who was the seller of that land?

A. I bought the corner—there was two pieces. The corner, I believe, was a 100 foot parcel, and the next was 50 feet. That 150 foot parcel I bought from Mr. Worthington, [1329] who represented the Ayers people, and I believe the property belonged to an oil company and the Frank Ayers. I think it was the Superior Oil and the Frank Ayers people. I think they owned the property together.

Q. Was Los Angeles Extension Company connected with that? A. That's right.

The Court: When was it your purchased this property?

The Witness: I made a deposit the early part of 1947.

The Court: Do you remember the date of the deed?

The Witness: The deed, I believe, is September 1947.

Q. (By Mr. Corinblit): Now, subsequently, after you acquired the 150 feet on which the Paradise is built, did you also acquire some property adjoining that Paradise property?

(Testimony of Alex Schreiber.)

A. I did. After I made arrangements to buy the 150 feet, there was another piece of property next door, south of this 150 feet, of 100 feet that was owned by a Mr. Dizik and his brother-in-law, and when I got back to Detroit, I believe I called or wrote Mr. Norman Scheinman, that was the judge's brother. I either wrote him or called him to contact Mr. Worthington and make arrangements to buy the next 100 feet, because I felt that if we built this beautiful theatre I had in mind we would build, that would increase the value of the [1330] property next to that, and I thought by our efforts in building a beautiful theatre, if it would increase the value of the lot next to it, it would be good business to buy the lot next to it, so we bought the 100 feet.

I remember next to that 100 feet there was a real estate office and—I think it was—no, there was two small buildings. One was a real estate office owned by McCarthy Realty Company, and the other store that was in that building was vacant. It was a small store. So there was just this 100 feet available next to our property. On the other side of this real estate office, there was a vacant lot and then the Foster Freeze Ice Cream place and a gas station, and that took to the end of the business section of Westchester.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express

(Testimony of Alex Schreiber.)

any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition, we will now recess until 15 minutes after 3:00.

(Recess.) [1331]

The Court: Do you stipulate the jury are present and in the jury box?

Mr. Corinblit: So stipulated.

Mr. Johnston: Yes, your Honor.

Mr. Corinblit: You may proceed.

Q. (By Mr. Corinblit): Mr. Schreiber, I think at this point perhaps—well, I will go on.

After you furnished the—strike that. After you purchased the property where the Paradise Theatre Building now stands, did you thereafter discuss the matter of purchasing—did you discuss the matter of erecting a theatre with an architect? Did you get an architect to draw plans for you?

A. Yes. When I went back to Detroit I spoke to Mr. Rogvoy (phonetic), an architect in Detroit, who did theatre remodeling and built several theatres in Detroit; whether he would make a trip to Los Angeles and look over this area and let me know whether he would be able to do the plans and design the building and make arrangements to build the theatre for me.

The Court: Mr. Corinblit, there is no dispute in this case that Mr. Schreiber bought a location for a theatre. There is no dispute that he built the theatre.

(Testimony of Alex Schreiber.)

I don't presume there is any dispute that it is a beautiful theatre. [1332]

Mr. Mitchell: Right.

The Court: Now, why not proceed? Why go into all these details? It has nothing to do with this case except that the theatre was beautiful.

This is a question dealing with the distributors. It is not a question dealing with who the architect was or how much the theatre cost.

Mr. Corinblit: Well, your Honor, in that regard perhaps I am wrong in interpreting the kind of stipulation that we are all willing to enter into—that is, we think the Paradise Theatre is a beautiful theatre. We think it has all the finest available equipment, furnishings. We think it was a beautiful theatre in which to see a picture. It had everything that you had to have for that purpose.

If we can get a stipulation to that, then I don't have a minute's hesitation in going on.

The Court: Won't you stipulate it is as good a theatre as the Loyola, as nice a theatre as the Loyola.

Mr. Mitchell: All I know is—I have never been in the Loyola. I have never been in the Paradise. All I know is what the witnesses said and what Mr. Corinblit said about the theatre is all true, it is a beautiful theatre, properly equipped and I can't compare it with the Loyola because I don't know, but it is a beautiful theatre and properly equipped.

Mr. Corinblit: Does that go for you, Mr. Johnston? [1333]

(Testimony of Alex Schreiber.)

Mr. Johnston: It certainly does.

Mr. Corinblit: All right.

Q. (By Mr. Corinblit): Now, there are a couple of things, because of some discussion that we had from Mr. Pirosh about some things about the Chinese Theatre. There is only one small element of the Paradise Theatre I would like to have Mr. Schreiber tell us about in the light of that stipulation, and that is, you have in the Paradise Theatre, don't you, Mr. Schreiber, something that you call "Academy Award Board," is that right, some special kind of arrangement there that people are supposed to see.

Will you describe that for the jury very briefly, because it is not directly in point?

The Witness: Is that all right?

The Court: Go ahead.

The Witness: We have in our theatre what we call the "Academy Award Display" that we went to quite a big expense and time in assembling and installing on the rear wall of our theatre, which shows, since the beginning of the Academy Awards in 1927, all the pictures each year that received the Academy Award; the male star that received the Oscar for best acting; the female star that received the Oscar for the best actress for that year, the best director, the best picture, and other highlights of the Academy Awards from 1927 up to 1955. [1334]

We keep that display up to date. And in addition, the awards that were given to the other people by the Academy Award Society for the best black and

(Testimony of Alex Schreiber.)

white, the best color, and the best two-reeler and best newsreel, best documentary, et cetera.

We have a separate display of that giving those people the honors that they deserve, plus in our entrance court we have in our flagstone entrance a bronze plaque for each year starting with the 49th year when we opened, cemented in the flagstone with a bronze plaque giving the name of the same male star, female star and the name of the picture that won the Academy Award. And each year we put in that flagstone entrance court this bronze plaque which would be similar to what Mr. Pirosh or Mr. Zabel said about what they have at the Grauman's Chinese insofar as footprints or fingerprints or shoeprints in front of the Chinese Theatre. We have ours in bronze plaques. [1335]

Q. Mr. Schreiber, I will show you an exhibit which has been marked Plaintiff's Exhibit 45-D-1 and ask you if you will identify this photograph.

Mr. Mitchell: Isn't that a drawing?

Mr. Corinblit: Yes.

Q. If you will identify this drawing and state who made it and at what time.

A. This drawing was prepared by Arthur Froehlich in association with Mr. Ted Rogvoy from Detroit. I believe the first one Ted Rogvoy drew was a suggestion, and from that suggestion Mr. Froehlich made his drawing.

Q. That was approximately when?

A. That was in 1948.

Q. Without again going into detail, I show you

(Testimony of Alex Schreiber.)

a group of documents which have not been marked heretofore, but they have been shown to counsel, a group of photographs, and ask you if you can identify these photographs as being photographs of the interior of the Paradise Theatre and the exterior.

A. This first photograph is——

Q. You needn't describe them all, Mr. Schreiber. Just examine them to state if they are photographs of the Paradise Theatre.

A. Yes, this is one and this is a photograph, and this is the interior. This is our Academy Award display. This is [1336] a close-up of six years of display. This is our candy stand. This is our foyer. This is our lobby. This is the lobby and foyer combination. These are all duplicates, with the exception of this one, which is a close-up of several other years of Academy Awards.

Mr. Corinblit: We will first offer in evidence, your Honor, the group of photographs which we will have marked for identification.

Mr. Mitchell: We don't have any objection to the pictures.

Mr. Johnston: But there are some statements attached to the photographs which we think should be removed. I have no objection to the photographs.

Mr. Mitchell: I have no objection to the photographs either, but the other should be removed.

Mr. Johnston: Just take off the statements.

The Court: The photographs may be admitted in evidence.

The Clerk: 45-D-2.

(Testimony of Alex Schreiber.)

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 45-D-2.)

Mr. Corinblit: I would like to offer in evidence 45-D-1, which is the drawing.

Mr. Mitchell: Let me see the drawing just a minute.

The Court: What difference does it make? You have [1337] got pictures of the theatre. What difference does it make?

Mr. Mitchell: I think the drawing is in the super style, your Honor. Perhaps it would be better to have just the photographs.

The Court: I think the photographs are ample.

Mr. Corinblit: We will withdraw the offer, your Honor.

Q. Now, Mr. Schreiber, just to wrap this point up so that we can have it established, can you state for the jury the total cost of the building and the total cost of the equipment and the total cost to the corporation of the land? Give us those figures, please.

Mr. Johnston: Your Honor, we will object to that as being outside the issues involved in this lawsuit. We have entered into an agreement on the physical structure.

The Court: Overruled. He can answer the question faster than you can argue about it.

The Witness: The corporation paid \$122,400 for the land that the theatre is situated on. We paid approximately, the corporation paid to the contractor

(Testimony of Alex Schreiber.)

approximately \$245,000 or \$250,000 to build the building, and we put in, in seats, carpets, the finest RCA sound equipment——

Q. (By Mr. Corinblit): Just the figures, Mr. Schreiber.

A. Approximately \$75,000. That would total around \$450,000, I believe. [1338]

Q. Incidentally, with respect to that land cost, the land cost to the corporation was an increased land cost. It isn't what you paid for it, is it, individually?

A. I paid less than that, but the value of the land was given to me by the Ayers Company, and I put it in for what the Ayers Company said it was worth, because in order to get the mortgage, we had to state what the land cost was or the value of the land.

Q. The pictures show the theatre already built, but there are some intervening events, Mr. Schreiber, we have got to go into.

After you had acquired an architect, after you had plans and so forth, did you discuss the matter of the Paradise Theatre and the matter of pictures with Mr. Joseph Schenck? Did you have such a discussion?

A. Mr. Joe Schenck?

Q. Yes. A. I did.

Q. Will you state when that discussion took place? A. March 15, 1949.

Q. All right. Would you tell us what was said in that conversation?

(Testimony of Alex Schreiber.)

Mr. Johnston: I object to that on the ground it is incompetent, irrelevant, immaterial, hearsay.

The Court: Let's lay a foundation, where the conversation [1339] took place, who was present.

Mr. Corinblit: Yes, sir.

The Court: And what connections, if any, Mr. Schenck had with any of the defendants at that particular time.

Mr. Corinblit: All right, your Honor. I think we have a pretty complete record on that from the witnesses.

The Court: That may be perfectly true, but let's tell the jury. Let's not hide it from the jury.

Mr. Corinblit: Very well.

Q. Mr. Schreiber, will you state when the conversation took place?

A. The conversation took place on March 15, 1949, somewhere around 1:30, 2:00 o'clock in the afternoon, at Mr. Schenck's office in Twentieth Century-Fox Studios on Pico Boulevard in Los Angeles. The appointment was arranged for by Mr. Epstein, who was an employee of the Fox West Coast Theatres. He made the appointment for me to meet with Mr. Schenck.

Q. Turning to Mr. Joseph Schenck, at that time what connection did he have with Twentieth Century-Fox?

A. I understood Mr. Schenck to be in full charge of the Fox Studios, Twentieth Century-Fox Studios, and he also, I understood, at that time was

(Testimony of Alex Schreiber.)

president and one of the big men of United Artists Theatres Circuit. [1340]

Q. United Artists Theatres Circuit, as has been testified to in this case, was a corporation which in 1949 had joint interests with Fox in the Egyptian Theatre on Hollywood Boulevard, the United Artists Theatre downtown, the Ritz Theatre on Wilshire Boulevard, is that correct?

A. I understood he was the head of the United Artists, and they had a big chain of theatres.

Q. Now, in addition to Mr. Epstein, an employee of Fox West Coast, and Mr. Schenck, who else was present at that meeting with Mr. Schenck on March 15, 1949?

A. Mr. Pat Di Cicco, who was supposed to be, or I understood to be the general manager of the United Artists Theatres Circuit in the Los Angeles area, or over the whole United States or the whole state of California circuit. He was the No. 1 man under Mr. Schenck and under George Skouras of United Artists Theatres Circuit. [1341]

Q. All right. Now, will you tell me what was said by you and what was said by Mr. Schenck?

Mr. Johnston: I am going to object to that as being immaterial to the issues involved in this lawsuit. And I think a voir dire examination of Mr. Schreiber on this subject should be conducted outside of the presence of the jury.

The Court: Now, give me your reasons why you think it doesn't apply to this case.

Mr. Johnston: Your Honor, stated simply, it is

(Testimony of Alex Schreiber.)

this. Mr. Schenck was acting on that occasion on behalf of United Artists Theatres Circuit.

The Court: I don't know. He was also connected with Fox, was he not?

Mr. Johnston: He had a connection with Fox. I don't deny that in any respect whatsoever, but he was not acting for Fox and Mr. Schreiber's testimony in his deposition in this case shows clearly that Mr. Schenck was acting for United Artists Theatres Circuit and not for Fox.

And in that connection I would like to refer the court to a memorandum that has been filed by the defendants——

The Court: I have read all your memorandums.

Mr. Johnston: And there is in that memorandum a clear indication of Mr. Schenck sole capacity at that meeting and that indication is that it was on behalf of United Artists [1342] Theatres Circuit. For that reason I say that the conversation with him is immaterial. It is incompetent. It has no bearing on the issues of this case and does not tend to prove or disprove any of the issues involved herein.

The Court: Mr. Mitchell, do you have an objection?

Mr. Mitchell: So far as the defendants I represent, of course, Mr. Schenck has nothing to do with Warners or Loew's or Universal or Paramount, and as to them it is hearsay. And since it occurred prior to the time alleged in the complaint that this conspiracy took place, they can't be involved as co-conspirators, and in matters that are not alleged to

(Testimony of Alex Schreiber.)

have taken place until 1950, September 17, 1950, so it is incompetent as to them and also immaterial.

The Court: United Artists is a defendant in this case?

Mr. Mitchell: No, sir. You dismissed United Artists and that isn't United Artists Theatres Circuit.

Mr. Johnston: It is a different company.

Mr. Mitchell: You see, there are two United Artists, as your Honor remembers. There is a United Artists Distributing Company which distributes film for independents or did, various independent units of producers who would produce a picture and then United Artists would distribute it, just like Paramount distributes its own pictures and Loew's distributes its own pictures and so on. And then also there is another company called United Artists Theatres [1343] Circuit. There is no connection. They both have the same name "United Artists" in it, but there is no connection and that company owned theatres,—the ones that Mr. Corinblit mentioned and various others including United Artists Theatre in Inglewood and those theatres at the time prior to this conspiracy were operated by Fox West Coast, which operation terminated, so the evidence is hearsay in the neighborhood of the first of 1950, so that United Artists Distributing Company was dismissed out of this case and is not a party.

United Artists Theatres Circuit never was a party and it is not alleged to be a party to any conspiracy. So, as to my defendants I think it is incompetent, irrelevant and immaterial.

(Testimony of Alex Schreiber.)

The Court: Is there any other objection?

Mr. Johnston: Your Honor, I should like, if I may, to call the attention of the court to the deposition of Max Schreiber, Mr. Alex Schreiber's son, who was allegedly present at the time of this meeting, and who is also an officer of the plaintiff corporation, with respect to the capacity in which Mr. Schenck was acting at the time. If I may hand this up to the court——

The Court: No, I don't care to see it.

Mr. Johnston: Or I will read it, if it makes no difference.

The Court: I don't care for you to read it.

Ladies and gentlemen of the jury, we are coming to a question that may be difficult to determine, and that is whether it is a question of fact or a question of law.

If it is a question of law you have no concern with it at all. If it is a question of fact, it is your duty to determine the facts. It is not the court's duty to determine the facts.

A contention has arisen now that Mr. Schenck in making these statements, was speaking only as a representative of United Artists Theatres Circuit and wasn't speaking as a representative of Fox.

I think that is a question of fact for you to determine and not for this court to determine whether or not statements he made were applicable to Fox.

Now, there is a general rule known to those familiar with the law as the "hearsay rule." The hearsay rule is this. A party cannot testify to a conver-

(Testimony of Alex Schreiber.)

sation that took place unless the other parties were present. Otherwise, that would be hearsay.

Now, Mr. Schenck, if he speaks for Fox it is hearsay probably so far as the other defendants are concerned, ordinarily. In other words, Mr. Schenck might be able to make statements that are very detrimental to Fox, but those same statements might not be attributable to Warner Bros. or applicable to Warner Bros. or Paramount because they would [1345] be hearsay as to Warner Bros. and Paramount.

Now, there is one exception to this rule. You know in law we have a rule and then we have a multitude of exceptions and the exceptions many times are much bigger than the rule itself.

So, here is the exception. If there is a conspiracy, if there is a conspiracy and Fox is a part of that conspiracy, then the statements of one conspirator may be held as against all the conspirators. That is an exception to the hearsay rule.

Now, the main thing that you are going to determine in this case is, was there a conspiracy?

Now, if I felt that the statements made by Mr. Schenck were attributable to Fox and I were to rule out those statements, then I would in effect be ruling there was no conspiracy. Or if I allowed them in I might be ruling that there was a conspiracy, but I am not going to base my ruling upon the question whether there was or was not a conspiracy because that is a question of fact for you to consider and to determine.

(Testimony of Alex Schreiber.)

Now, if you determine that there was a conspiracy and that the Fox West Coast or Fox was a part of that conspiracy, then the statements of Mr. Schenck can be applied to all the conspirators.

If you determine there is no conspiracy, then, of course, [1346] anything that Mr. Schenck said could not be applied to any of the other defendants.

This is a technical point of law but I think it is a question of fact for you to determine and not a question for the court. It is not a question of law. And whether or not Mr. Schenck represents in making these statements Fox, or was representing Fox or United Artists is something for you to determine. It is a question of fact, and you are to determine that from all the evidence that is introduced in this case.

So far we don't know. Depositions have been taken. Those depositions are not before you at this time. They haven't been read to you.

We have the statements of counsel that Mr. Schenck was only speaking for United Artists Theatres Circuit, but that is not evidence.

So, on the basis of the record at this time, I am going to overrule the objection.

Mr. Mitchell: Your Honor, would you be willing to state to the jury an undisputed fact with respect to the fact that United Artists is a distributor of motion pictures and United Artists Theatres Circuit is an exhibitor?

I think that is undisputed.

The Court: Yes, that is correct, and neither one

(Testimony of Alex Schreiber.)

of those parties are defendants in this particular case. But [1347] there may be parties who are not defendants who were also a part of the conspiracy.

Now, I don't know whether they were or not, but the fact that they are not a party defendant does not rule out that there was a conspiracy or if there was a conspiracy, that they were parties to it.

So, remember that the main issue in this case—and don't you take your eye off the ball, you must follow the main issue in this case and that is was there a conspiracy, and if you determine there is no conspiracy the case is over with. And you can't proceed with the case and determine any of the other issues until you determine that there was a conspiracy and you can't determine that until you hear all of the testimony.

Mr. Mitchell: I think it would also be agreed that there was no connection and there is no connection between United Artists and United Artists Theatres Circuit.

Mr. Corinblit: Yes, we will agree to that.

The Court: That is agreed to and that is understood.

Mr. Corinblit: All right.

Q. Mr. Schreiber, will you tell us what took place, what you said and what Mr. Schenck said and what the other parties said in this meeting with Mr. Schenck at the Twentieth Century-Fox Studios and in the offices of Mr. Schenck on [1348] March 15, 1949?

Mr. Mitchell: Now, your Honor, may our objec-

(Testimony of Alex Schreiber.)

tion be deemed to go to all of this line of testimony?

The Court: You may have a running objection. It is the same objection and the ruling is the same.

Mr. Mitchell: Thank you.

The Witness: This meeting was arranged by Irving Epstein. He called me at my home, I believe, and told me that he had this appointment with Mr. Joseph Schenck at the Twentieth Century-Fox Studio on Pico Boulevard at about 1:30 or 2:00 o'clock in the afternoon of March 15th.

Q. (By Mr. Corinblit): Mr. Schreiber, will you stop right there and identify again who Mr. Epstein is? Is he an employee of—who is he an employee of? A. Fox West Coast Theatres.

Q. Go ahead.

A. And Mr. Epstein asked me to come to that meeting to discuss the purchase of a half interest in our Paradise Theatre by Mr. Schenck.

Mr. Schenck wanted to purchase a half interest in our Paradise Theatre. Now, this was before we are built. This was March 15, 1949. We did not start construction of our theatre until October 7, 1949.

I went to Mr. Schenck's—I went to the Fox Studios on Pico Boulevard with my son and we met there Mr. Epstein [1349] from Fox West Coast Theatres, Mr. Pat Di Cicco, who was general manager, I understand, for the United Artists Theatres Circuit, and Mr. Joe Schenck, whom the entire industry knew was connected with Fox and United Artists Theatres Circuit. That was known all over the United States because Mr. Schenck, when I was

(Testimony of Alex Schreiber.)

told about him, was described to me as one of the ten biggest men in the motion picture industry and in my opinion he was maybe one of the top five.

The Court: We are not asking you for your opinion. We are not asking you what you were told. Just keep to the conversation now.

Q. (By Mr. Corinblit): Just state the conversation, Mr. Schreiber.

A. We met in Mr. Schenck's office and I had with me the photograph, one of the photographs of the front of the theatre building with the bowling alley that was combined. We never mentioned it here, but we had a bowling alley layout with the theatre in the building.

I laid the plans down after the proper introduction to Mr. Schenck by Irv Epstein of Fox West Coast Theatres, I laid the plans down on Mr. Schenck's desk and showed him a photograph of the theatre we planned to build.

I told him Irving Epstein from the Fox West Coast Theatres Circuit asked me to come, because he requested me to come there because they were interested in the theatre and wanted to buy a 50 per cent interest with-us.

Q. Mr. Epstein had told you Mr. Schenck wanted to discuss the matter with you?

A. Yes. They sent for me.

Q. All right.

A. Way before March 15th, Mr. Epstein had suggested a meeting.

Q. Just go on with the meeting of March 15th.

(Testimony of Alex Schreiber.)

A. So when we met in the office, he looked the plan over and he commented that it looked like it would be a beautiful theatre.

Q. Who was this that commented?

A. Mr. Schenck, and Mr. Irv Epstein and Mr. Pat Di Cicco both were pointing out all the fine features of the plan, which they had seen before this meeting, and they told Mr. Schenck what they thought of the neighborhood, and Mr. Schenck said he knew of the neighborhood, knew it very well, and it would make a good theatre operation.

Then we talked—I said to Mr. Schenck, “Well, I am told that we will have first run Metro pictures in that theatre, because the Loyola Theatre, the Fox Theatre, was running first run from all the distributors, they were running first run pictures, and on that basis the Fox theatre people have established Westchester as——”

The Court: Is that what you told Mr. Schenck or is that a conclusion?

The Witness: I told that to Mr. Schenck.

The Court: You tell us just what you told Mr. Schenck and don't tell us any conclusions.

The Witness: I told Mr. Schenck all the film companies were serving the Westchester area first run pictures, and I saw no reason why the Paradise shouldn't have first run Los Angeles pictures also.

And Mr. Schenck told me that he would put in Metro product first run in the Paradise Theatre and I should not worry about first run pictures, that would be his job and his organization would put

(Testimony of Alex Schreiber.)

first run pictures in that theatre, and for me not to worry about it and for me not worry about financing or equipment or anything, that that is what they would do.

During the conversation, he threw the switch up to his inner office communication and he called his secretary in and he asked her to bring in the Loyola Theatre receipts and his girl brought that in, and it was in a folder about the size of what is laying on the desk there. He opened it up and he read off eight or ten, maybe 12, maybe six pictures that were playing at the Loyola Theatre first run Los Angeles, with the Chinese Theatre and with the Los Angeles Downtown and with the Fox Wilshire and with the Uptown. He read off the receipts, and he said, "They do a very big business, very good business," or words to that effect, "in the Westchester area, and it is a good location and, boy, these are wonderful receipts."

He read off the first week, second week, and if they ran more than two weeks, he read off the three days or four days or five days of the third week, and then he put it down and said, "It's a very good area."

Then Mr. Epstein said to Mr. Schenck, "Mr. Schenck, [1353] I am telling Mr. Schreiber not to build the bowling alley, that we should not build the bowling alley." He used the word "we" many a time. "We should not build the bowling alley and we should use that lot for a second run theatre. Then we can run the pictures that play first run in

(Testimony of Alex Schreiber.)

the Loyola and first run in the Paradise, run the two of them together in the second run theatre at a smaller admission and furthermore," Mr. Epstein said, "If we do this, Mr. Schenck, I am sure Mr. Griffith will not build the Will Rogers Theatre," which was supposed to be built directly across the street from us at the corner of Will Rogers and Sepulveda. That was supposed to be an 1800 or 2,000 seat first run theatre.

Mr. Epstein said to Mr. Schenck, "We should not build the bowling alley. Let's build our second run theatre there and that will stop Mr. Griffith from building a theatre."

And Mr. Griffith did not build his theatre.

The Court: Now, that is not part of the conversation.

The Witness: I am sorry.

The Court: You are going outside the conversation.

The Witness: I'm sorry.

The Court: Keep right with the conversation.

The Witness: I will. Then we talked about——

Q. (By Mr. Corinblit): Just a minute, Mr. Schreiber. What did Mr. Schenck say to that statement by Mr. Epstein? [1354]

A. He told Mr. Epstein and me, "We will not worry about a second run theatre at this time. Let's build the Paradise and we will worry about the second run theatre later."

He said to me, "Young man, go on your trip and

(Testimony of Alex Schreiber.)

when you get back, Mr. Epstein or Mr. Di Cicco will meet with you and you will go to your attorney and you will draw papers and then we will proceed immediately with the building of the theatre."

Then I said to Mr. Schenck, "Mr. Schenck, before I leave, there is something that is bothering me."

He said, "What's that?"

I said, "Mr. Epstein told me before this meeting that you had several people with you that were going into this deal and because you had several people that you had to have a 60 per cent interest in the Paradise Theatre, rather than a 50 per cent interest. I am a little worried about being a minority stockholder."

He said, Mr. Schenck said to me, "Young man, don't worry about being a minority stockholder. There are laws in California that protect minority stockholders. You have nothing to worry about. If you are thinking about excessive salaries or excessive charges or anything, we will have the United Artists Theatre Circuit book and buy the pictures. They have a set scale or a set policy of," I believe he said "5 per cent or 5¼." He wasn't sure, "but there will be a [1355] set charge based on how much money the theatre takes in, based on the receipts, and that is what you will be charged for and no more."

I said I felt a little different about that, but that is something I assumed our attorneys would straighten out when we had our meeting.

He again said to me, "Young man, go on your va-

(Testimony of Alex Schreiber.)

cation and we will get together when you get back from your trip to Honolulu.”

Q. Mr. Schreiber, prior to that meeting of March 15, 1949, you had had some conversations with Mr. Irving Epstein, whom you described as an employee of Fox West Coast, is that right?

A. That is correct.

The Court: May I ask the witness a question?

Mr. Corinblit: Yes, sir.

The Court: You said something to Mr. Schenck about owning 60 per cent of the interest in the theatre. How did you get that information? From whom did you get that information?

The Witness: I got that information from Mr. Epstein.

The Court: What did Mr. Epstein tell you about the percentage that Mr. Schenck or his associates wanted?

The Witness: On about March 14th, the evening of [1356] March 14th or the afternoon of March 14th, Mr. Epstein, when we made the arrangements for the appointment on March 15th, said to me, “Alex, now we are going to meet Mr. Schenck at his office at the Twentieth Century-Fox Studios, and I want to tell you ahead of time, I don’t want you to be mad,” he said, “I don’t want you to be mad, but, you know, we talked about 50-50, but Mr. Schenck has several partners or several people that are going in on the deal with him and Mr. Schenck wants me to tell you that he wants, he needs or he wants 60 per cent of the deal.”

(Testimony of Alex Schreiber.)

I said, "Well, Irv, that isn't what you told me in the previous meeting. It was supposed to be a 50-50 deal."

Mr. Irving Epstein said to me, "Alex, what difference does it make whether it is 60-40 or 50-50? Your 40 per cent interest will earn you more money, being associated with Mr. Schenck, than if you had the place 100 per cent and, furthermore, with the tax bracket and the government taxes, how much of the extra 10 per cent will you be able to keep? Take my advice. Make a deal with Mr. Schenck and you will have nothing to worry about. You can continue or you can join a country club, you can take vacations, you can travel all over the world. You haven't got a thing to worry about. I am telling you to make this deal with Mr. Schenck."

I said, "All right."

The Court: When was the first meeting you had in [1357] which there was discussion that Mr. Schenck was going to take any part of the theatre?

The Witness: Oh, I would say several months prior to March 15th, right after the first of the year 1949.

The Court: Where did the conversation take place?

The Witness: The conversation took place with Mr. Epstein and myself in Mr. Epstein's office at the Fox Theatre offices on Vermont and Washington. They took place in my automobile, possibly in his automobile, at lunch, and several times we went to the restaurant on Western and Ninth, the Nika-

(Testimony of Alex Schreiber.)

bob. I never knew it, but Mr. Epstein took me there. I never knew about any Nikabob Restaurant. He took me there.

The Court: What was the first suggestion Mr. Epstein made to you relative to Mr. Schenck taking any percentage in the theatre? What did Mr. Epstein say?

The Witness: In the first conversation he had with me, he said, "Alex, our——"

No, the first conversation was Mr. Sam Decker told me that Irving Epstein wanted to talk to me, that he had one of the biggest men in the business that wanted to take a 50 per cent interest in the Paradise Theatre and build it with me 50 per cent.

Then I made the appointment. I told Decker, "All right, I will meet the man."

That was Irving Epstein, and Irving and I met in [1358] Mr. Decker's office several times in the back room, we met at lunch, we met in the office, we met in the automobile, we met in Mr. Epstein's office. I am not sure whether we met at my home or not, because in 1947 I didn't have a home here. I was living at the hotel.

The Court: What did Mr. Epstein say about Mr. Schenck wanting an interest in the theatre?

The Witness: He said he had one of the biggest men in the theatre industry that wanted a 50 per cent interest in the Paradise Theatre and would build it with me. At first he didn't tell me Mr. Schenck's name. He told me later, because I told him before I would commit myself to give up 50 per

(Testimony of Alex Schreiber.)

cent interest, I had to know who the man was, and when he told me Mr. Schenck, I just, literally speaking, fell over. [1359]

Q. (By Mr. Corinblit): Mr. Schreiber, I want to show you a telegram which has been marked Plaintiff's Exhibit 45-R-2 for identification, and ask you if you received this telegram.

(Handing document to the witness.)

A. That telegram I received from Irving Epstein regarding Joe Schenck——

The Court: The question is did you receive it. The answer is either yes or no.

The Witness: Yes, sir.

Q. (By Mr. Corinblit): And I will show you a telegram which has been marked Plaintiff's Exhibit 45-R-5, dated April 22, 1949, and ask you if you received this telegram.

(Handing document to the witness.)

The Court: Just answer the question yes or no.

The Witness: Yes, I did.

Q. (By Mr. Corinblit): I will show you a letter, a copy of a letter dated April 29, 1949, addressed to Mr. Irving Epstein. The address here is Twentieth Century-Fox Film Corporation, Insurance Department, South Vermont at Washington, Los Angeles, Cal.

I will ask you if you sent that letter to Mr. Irving Epstein. A. Yes.

Mr. Corinblit: Your Honor, we will offer [1360]

(Testimony of Alex Schreiber.)

in evidence Plaintiff's Exhibits 45-R-2 and 45-R-5 and 45-R-6.

Mr. Mitchell: Our objection goes to all of this, and Epstein included. We object to it not only because of the conversations with Mr. Schenck, but on the same basis the conversations or communications with Mr. Epstein.

The Court: Same ruling. The objection is overruled. They may be received in evidence.

(The documents referred to were received in evidence and marked as Plaintiff's Exhibits Nos. 45-R-2, 45-R-5, and 45-R-6.)

Mr. Johnston: May I add the objection that there has been no foundation laid with respect to the capacity in which Mr. Epstein was acting in this matter.

The Court: Is there any dispute that Mr. Epstein was an employee of Fox?

Mr. Johnston: None whatsoever, but he wasn't acting in that capacity. He was acting as a friend of this gentleman and an acquaintance of Mr. Schenck, but he wasn't acting as an employee of Fox.

The Court: Objection overruled. That is a question of fact for the jury.

Mr. Johnston: I simply want to make my objection for the record.

The Court: You may make your objection. I will certainly sustain you in your right to make an objection. [1361]

(Testimony of Alex Schreiber.)

Mr. Johnston: Thank you, sir.

The Court: Do you want to read those telegrams?

Mr. Corinblit: Yes. I want to read them. The first telegram has a stamp on it, a date stamp January 31, 1949. That was about six weeks prior to the meeting on March 15th with Mr. Schenck.

"The gentleman is highly interested and will work out matter with you upon your return. Regards. Irving Epstein."

Q. (By Mr. Corinblit): The gentleman referred to in that wire, Mr. Schreiber, was whom?

A. Joseph Schenck of Twentieth Century-Fox and United Artists Theatres.

Q. Now, Mr. Schreiber, in fact, in communications between you and Mr. Epstein had you been instructed by Mr. Epstein whether to use his name, whether to use Mr. Schenck's name or not?

Mr. Johnston: Just a moment, your Honor. I object to that as calling for a conclusion of the witness. No foundation has been laid.

The Court: Objection sustained.

Now, if you want to read the letters or the telegrams you may do so and then we will take a recess.

Mr. Corinblit: All right.

Q. (By Mr. Corinblit): Now, the following wire is a [1362] wire after the meeting of April 15th. It is dated April 22nd and is addressed to Alex Schreiber—withdraw that. It is addressed to A. Schreiber at 1323 Dime Building, Detroit.

(Testimony of Alex Schreiber.)

"Dear Alex. Have spoken to Joe. You will either hear from him by telephone or letter. Everything okay. Regards. Irving Epstein."

And "Joe" was whom?

A. Joe Schenck. [1363]

* * * * *

Q. (By Mr. Corinblit): Mr. Schreiber, yesterday at the conclusion of the [1370] session you had been relating the conversation that had taken place at the Twentieth Century-Fox Studios with Mr. Joseph Schenck.

There are one or two matters I wanted to ask you about that. With respect to pictures, that is the Loew's pictures that were mentioned there, was anything said by anyone there concerning the theatres in which the pictures were playing?

A. Yes. Mr. Schenck said to me when we had this meeting, that the Paradise would play first run Metro or Loew's pictures—I don't remember just how he described them, but it was Metro or Loew's pictures first run in the Paradise day and date with the Grauman's, Egyptian and with the Loew's State downtown and for me not to worry about first run product, that he would take care of that or anybody else's first run product; that that was the least I had to worry about and along those particular lines.

Q. All right. And then finally was anything said at that meeting with respect to the kind of theatre that the Loyola Theatre was?

(Testimony of Alex Schreiber.)

A. Yes. Mr. Schenck said he knew the Loyola Theatre. He knew the area. It was a good area, and that the Loyola was one of the top grossing theatres in the Fox first run chain. In fact, that is what he told me when he read off the list of those six to twelve pictures, when he read [1371] me the grosses and some of the grosses which I didn't remember yesterday. I remember those grosses distinctly. There was one or two of them that were over \$10,000 the first week that they had played the picture, and then he read me the receipts of the second week, and part of a third week, if the picture ran more than two weeks.

Q. Now, prior to that meeting with Mr. Schenck, had Mr. Epstein said anything to you concerning the theatres in which first run pictures were to be played?

A. Yes. Mr. Epstein, the first time when he told me he had one of the biggest men in the industry that wanted to buy the 50 per cent interest, he told me that this party would get us first run pictures day and date with Hollywood and downtown. And later when he told me it was Joe Schenck, he suggested or recommended very highly that I make this deal because he said: "You would have first run Metro pictures day and date with the Grauman's, Egyptian and Loew's State downtown," and that I would have nothing to worry about and that my 50 per cent interest—I could go traveling all over and take it easy and join a country club and enjoy Cali-

(Testimony of Alex Schreiber.)

fornia, or words to that effect, but I would have nothing to worry about if I made that tie-up. [1372]

Q. Now, after the meeting on March 15, did you have a conversation with Mr. Epstein?

A. Yes. Well, I recited yesterday the one I had just prior to the meeting about where Mr. Schenck, he said, needed, instead of 50 per cent, 60 per cent.

Q. Yes.

A. Then the evening of March 15, after the meeting, that was the night before or late in the afternoon of the day before I went on my vacation, Irving called me at the house, and he told me that he was well pleased with the meeting, Mr. Schenck was well pleased with the meeting, everything is fine, and Mr. Schenck told him that when I got back from my vacation that we should go to their attorneys and draw up the papers, but, "Alex, I don't want you to get mad, everything is all right, but, Mr. Schenck, because of the people that are going to go in the deal with him," or words to that effect, either the people going in with him or—60 per cent was not enough—I am trying to get the words out, trying to remember the exact words he said, but the substance was now 60 per cent was not enough for Mr. Schenck, Mr. Schenck wanted 70 per cent of the theatre, and for me not to worry, and the same story again about they will get the first run pictures and they will finance the place, because at that time we didn't have the mortgage, I didn't accept the mortgage yet, we hadn't started building yet, hadn't

(Testimony of Alex Schreiber.)

bought the equipment yet, but we [1373] had the land bought, we had the plans all ready to go, had the application in for the mortgage.

“You don’t have anything to worry about, Alex, take my advice, make the deal, even though it is 70 per cent for Mr. Schenck and his crowd. You will have enough left out of the 30 per cent, it will be more than if you had the place all by yourself and you would have to bother about buying pictures, running it, financing it, buying equipment, you won’t have any of that, and the amount of money you have paid in on the land, the amount of money you have already paid the architect, will be more than sufficient to be your 30 per cent of the deal. Take my advice. Make the deal.”

Well, it was just a matter of less than 18 or 20 hours that I was leaving town, and I was quite elated over the fact that I was going to make this deal and I wouldn’t have the bother of buying pictures or equipment or anything like that, and I said, “Well, okay. When I get back from my vacation, we will go to the attorney and draw up the papers.”

Q. Approximately when did you return from your vacation?

A. I think it was around the 5th to the 7th or 8th of April. I was gone about 23 or 24 days.

Q. When you returned, did you have a conversation with Mr. Epstein? A. I did. [1374]

(Testimony of Alex Schreiber.)

Q. What was said between you? What did you say and what did he say?

A. Well, I would imagine it was in the first two days that I got back, I called Irv Epstein, and I asked him——

Q. Just a minute, Mr. Schreiber. You are not giving us a conversation that you imagine. I want the conversation that happened. When you state you imagine, you are talking about the time?

A. Yes, in that 48 hours.

Q. It took place within 48 hours?

A. Yes, I am almost positive of that.

Q. All right.

A. It may have taken place the first day I got back.

Q. Tell me what you said and what Mr. Epstein said to you.

A. I called Mr. Epstein to tell him I was back and wanted to know if he would contact Mr. Schenck or if he contacted Mr. Schenck, because I think I wrote him a card about when I was coming back. I wanted to know if he made arrangements to meet at the attorney's office to draw up the preliminary papers, so, naturally, I could show it to my attorney to see if it was all right, or make an appointment with the attorney to check it.

Irving Epstein told me he hadn't heard from Mr. Schenck, Mr. Schenck was out of town, that [1375] he thought he went up to San Francisco on the Golden State Theatre group, or the Nafie group,

(Testimony of Alex Schreiber.)

there was some group of theatres up there that he had—if I am not mistaken, at that time there was something in the papers that the——

Mr. Mitchell: Well, we don't need what is in the papers, your Honor. That wasn't part of the conversation.

The Court: Yes. Restrain yourself to giving the conversation.

Q. (By Mr. Corinblit): Just state what was said, Mr. Schreiber.

A. I believe Epstein told me he went up—that Mr. Schenck went to San Francisco to straighten out a matter that the government was investigating, whether the money that Mr. Schenck had in his chain around San Francisco was a loan or he had bought into these theatres, because there was some question there about——

Mr. Mitchell: Just a minute.

Mr. Corinblit: Just a minute, Mr. Schreiber.

The Court: Now, just restrain yourself to giving us just the conversation, not your conclusions that you drew.

The Witness: I just forget. I am sorry.

Q. (By Mr. Corinblit): Have you concluded, Mr. Schreiber, with what Mr. Epstein told you and what you told him?

A. No. He said we would have to wait [1376] until Mr. Schenck got back. I waited maybe 10 days, might have been a little longer, and I—Mr. Epstein called me and I called him all during this 10 or 12

(Testimony of Alex Schreiber.)

days that I still remained in Los Angeles, and Mr. Epstein told me he had not heard from Mr. Schenck or what attorney that we were to go to, so I went back to Detroit.

Q. Let's stop there. You then left Los Angeles and returned to Detroit, is that right?

A. That's right.

Q. All right. Now, we had introduced into evidence yesterday the wire dated April 22, which is Plaintiff's Exhibit 45-R-5 in evidence, which I think you testified you received in Detroit after you returned from Los Angeles, is that right?

A. Yes. That is my office in Detroit. [1377]

Q. All right. Now, we also had admitted into evidence Plaintiff's Exhibit 45-R-6, which was read to the jury, and as you recall it was your letter to Mr. Irving Epstein.

Now, in that letter, Mr. Schreiber, there is a statement that I want to ask you about. You say in this letter that:

"Sam Decker sent me a copy of one of the trade papers with news of the activity of our mutual friend who we are trying to make an appointment with."

Now, what was the information that you obtained about the activities of Mr. Schenck?

Mr. Mitchell: Now, wait a minute, your Honor. I object to that on the ground it is hearsay.

The Court: It is purely hearsay, what he read

(Testimony of Alex Schreiber.)

in the newspaper. That is hearsay whether it comes from a newspaper or a magazine.

Mr. Corinblit: There will be independent evidence offered as to what was going on and there is a reference here in a letter to an employee of Fox as to what activities were going on.

He transmitted this information to a representative of Fox. In other words, one witness says to another person A or B. Now, it is not offered for the purpose of showing that these things in fact took place, but there will be independent evidence to that—but it is simply to demonstrate [1378] that this witness said these things to the employee of Fox.

The Court: Objection sustained.

Q. (By Mr. Corinblit): Now, Mr. Schreiber, I think you testified that Mr. Schenck stated to you that he wanted 60 per cent interest in the Paradise Theatre to put the Metro product in there first run. After this date did Mr. Schenck—was an interest obtained by Mr. Schenck in the theatre?

A. No.

Q. Did you ever receive any Metro product on first run? A. No.

Q. Did you ever receive any other product during the period from August 1950 to September 1951 on first run? A. No.

Q. Mr. Schreiber, did you at some subsequent date to this conversation have a conversation with Mr. Charles Skouras? A. Yes.

(Testimony of Alex Schreiber.)

Mr. Mitchell: Now that we have left that subject, your Honor, I would like to move to strike all the evidence about Mr. Schenck and Mr. Epstein on the ground it is immaterial and has nothing to do with this lawsuit.

The Court: Motion denied.

Q. (By Mr. Corinblit): Did you have more than one [1379] conversation with Mr. Schenck?

A. I did.

The Court: Mr. Schenck?

Mr. Corinblit: I am sorry.

Q. Did you have more than one conversation with Mr. Skouras? I am talking now about Mr. Charles P. Skouras. A. I did.

Q. Did you have a conversation with Mr. Skouras at the Hillcrest Country Club? A. I did.

Q. Will you tell us approximately when that conversation took place?

A. I think it was while the theatre was under construction. I went to the Hillcrest Country Club for lunch.

Q. Just a minute, Mr. Schreiber. You told us when. Now, I want you to tell us who was present at the conversation—what persons.

A. There was Ted Gamble, Mr. Cy Fabian and Mr. Charles Skouras.

Q. At that time——

Mr. Mitchell: May we have the time fixed when the theatre was under construction because that doesn't mean anything.

(Testimony of Alex Schreiber.)

The Witness: The theatre started construction on October 7, 1949. [1380]

Q. (By Mr. Corinblit): And you opened the theatre on—— A. August 23, 1950.

Q. Now, who was Mr. Charles Skouras at that time?

A. Mr. Charles Skouras was the head man of Fox West Coast Theatres, and I understand everything that Fox was connected with.

Q. Now, will you tell me what you said and what Mr. Skouras said and what anyone else present at that meeting said at the time?

A. If I remember correctly I recognized the three men sitting at the table. I hadn't seen Cy Fabian or Ted Gamble for quite a while, and I naturally walked up to the table and said, "Hello" to both Cy Fabian and Ted Gamble.

The asked me if I knew Mr. Skouras. They wanted to make the introduction and I said, "I know Mr. Skouras." Mr. Skouras wasn't too pleased to meet me and appeared to be mad.

The Court: Now, now——

Mr. Mitchell: I move that be stricken and the witness instructed as to how to testify.

The Court: You can't testify as to your impressions or what you think. All you can testify is to what you said and what they said and what actually happened. You can't testify as what he seemed to be.

The Witness: I am sorry, I lose myself. [1381]

(Testimony of Alex Schreiber.)

The Court: All right.

The Witness: Mr. Skouras said: "Yes, I know Mr. Schreiber," and after a few minutes Mr. Skouras said to me, "Why you build the theatre in my neighborhood," or "territory." He used one of those words.

"I don't come to Detroit and build theatre in your territory," or "neighborhood."

"You want a theatre in Detroit. I sell you Fox Theatre in Detroit." I said, "Well, I am not interested in the Fox Theatre in Detroit. I don't want to buy the Fox Theatre in Detroit, but maybe my associates will. When I go back to Detroit, if you are serious, I will be glad to talk to my associates about it."

So he says, "Okay, you come in my neighborhood. You shouldn't come in my neighborhood," or "territory." I have forgotten the exact word that he used.

So I said to Mr. Skouras, "Well, the neighborhood can stand two theatres. It is a big neighborhood. It is a growing neighborhood. I am going to build a beautiful theatre. It will be a credit to the motion picture industry. You have nothing to worry about, Mr. Skouras. You are doing a good business." or words to that effect, "at the Loyola Theatre and there is a lot of people there. And furthermore," I said, "Mr. Skouras, Mr. Griffith is announcing he is going to build a big 1800 or 2000-seat [1382] theatre," and I said, "So if Mr. Griffith is going to come

(Testimony of Alex Schreiber.)

in there or indicated it, because there was an announcement in the Westchester paper and showed a picture of the Will Rogers Theatre which was supposed to be diagonally across from the Paradise, I don't know why we can't build a theatre."

"Well, I didn't come in your neighborhood in Detroit and you shouldn't come in my neighborhood," or "my territory. You shouldn't do that."

Well, he was mad so I left.

Q. (By Mr. Corinblit): Is that all that took place so far as that conversation was concerned?

A. No, I left and went to my locker where I had placed my briefcase and I came out with the briefcase and some photographs, and I went over to Ted Gamble—I think they were through with the lunch or I saw Ted and Cy sitting together and Mr. Skouras had walked away from the table. I don't remember, but I do remember distinctly of showing the pictures of the front of the building, the architect's drawing of the front of the building and I had two other pictures—air view pictures of the Westchester area and I showed it to Ted Gamble and said—

Q. Just a minute.

Mr. Johnston: Just a minute. I think this may be hearsay so far as Ted Gamble is concerned. [1383]

The Court: All he has testified so far is that he showed some pictures.

Mr. Johnston: I am perhaps anticipating something. [1384]

Q. Now, Mr. Schreiber, was Mr. Skouras pres-

(Testimony of Alex Schreiber.)

ent at the time you showed the pictures to Mr. Gamble, do you remember?

A. I would only guess and say he was not at the table.

Q. All right.

A. So I showed the pictures——

The Court: No. You showed the pictures and that's all.

Q. (By Mr. Corinblit): Now, after that conversation, Mr. Schreiber, was there a subsequent time when you had another conversation with Mr. Skouras? A. Yes. I had a dinner——

Q. Now, where did the conversation take place?

A. In the gymnasium room of Mr. Skouras in the Twentieth Century-Fox office building, or the Fox Theatres, National Theatres, the big building that they have on Vermont and Washington, in the gymnasium. That is the private gymnasium of the Fox officials, I understand.

Q. All right.

A. I went in the gym with George Bowser, whom I had a dinner date with, and from the dinner we were supposed to go to the Variety Club. Before we went into the gym, George Bowser—I met him in his office.

Q. Who was Mr. George Bowser at that time?

A. Mr. George Bowser was the general manager, the head man—I think the No. 1 man under Charlie Skouras of the Fox [1385] Theatres.

Q. All right.

(Testimony of Alex Schreiber.)

A. So Mr. Bowser said, "I want to go—come with me. I want to go in and see Mr. Skouras before we leave."

We got into this——

Mr. Mitchell: May we have a date for this?

Mr. Corinblit: Yes.

Q. Will you give the approximate time of this, as best you can remember, of this conversation with Mr. Skouras and Mr. Bowser?

A. This would be between August 1950 and January 1, 1951.

Q. All right. Now, will you tell us first what was said between you and Mr. Bowser just prior to your going in to see Mr. Skouras, and then what was said in the presence of Mr. Skouras.

A. We got in this gymnasium and Mr. Bowser also said he wanted to clean up at the same time before we went to dinner.

Mr. Ted Gamble was in the gym talking to Mr. Skouras when the two of us got in the room.

Mr. Bowser said to Mr. Skouras, "You know Mr. Schreiber, don't you, Mr. Skouras?"

He said, "Yes, I know him, I know him."

I listened for a few minutes while Mr. Bowser was [1386] talking to Mr. Skouras.

Then Mr. Skouras, after Mr. Bowser got through with him, says to me, "Say, kid, that Marco Wolff, he still book your theatre?"

I said, "yes, he still is booking our theatre."

He said, "You no go get pictures. He no good,

(Testimony of Alex Schreiber.)

and, you see, you going to have lots of trouble with him. He no good, no good. You want to sell your theatre? You want to lease your theatre? I lease it. I buy it. Price must be cheap."

So I said to Mr. Skouras, "I don't know how cheap." or words to that effect, but I would be glad to get my money out of it, this buying pictures and the trouble we are having is too much for me, or I will lease it, and I will take"—I think the figure I used was 4 per cent, I am not sure, on our investment, either 2½ or 4 per cent on our investment, or I would be glad to get our money out of it, because it is too much trouble there with the film companies and with Fox Theatres and trying to bid for pictures or forcing us to bid or insisting on bidding.

I said I would be glad to lease it or sell it, but whether it would be cheap or not, I don't know.

And he said, "You give the figures, you talk to Bowser and you give Bowser figures," or "You see Bowser, and I lease, or I buy theatre, but must be cheap." [1387]

Q. Now, did you thereafter leave the presence of Mr. Skouras with Mr. Bowser?

A. Yes, and Mr. Ted Gamble was standing there at the time.

We went to dinner, and on the way out, or at the the dinner table, George Bowser said to me, "Alex, I don't know what the boss means. He can't buy the theatre or lease it. The government won't let us buy or lease theatres. In fact, we have to get rid of

(Testimony of Alex Schreiber.)

theatres. I don't know what he has in mind or why why he said that to you."

I said, "George, you heard him," or words to that effect. "I will bring in the figures in a day or two. I will see my accountant and I will draw up some figures, and if I can make a deal, I would like to make a deal, because this Los Angeles territory is just terrible," or words to that effect, "in buying pictures."

He said, "Well, I don't know what the boss, I am still puzzled, I don't know why the boss told you that."

I said, "Maybe he has in mind somebody like Ted Gamble, who was standing there in the room, or some other friend of his to make a deal with me and be like a blind or a shield for Fox Theatres."

That was the discussion I had, or words to that effect. It may not be the exact words, but that was the substance of our conversation. [1388]

Q. Did you subsequently deliver figures to Mr. Bowser? A. I did.

Q. About how long after this meeting did that take place?

A. Oh, I would say within four or five days, maybe two days.

Q. Where did it take place?

A. In Mr. Bowser's office, in Fox Theatres' office, on Vermont and Washington.

Q. At the time you delivered those figures, what did Mr. Bowser say?

(Testimony of Alex Schreiber.)

A. He again repeated that he don't know why the big boss, or Mr. Skouras asked for the figures or why he was interested, but he would take the figures and he would discuss it with him, and if anything comes up, he would let me know, and he took the figures and he put them in the center drawer of his desk, pulled out the long wide drawer and he put the papers in there.

Q. Did Fox West Coast ultimately acquire any interest in the Paradise Theatre?

A. No, they did not.

Q. Did the Paradise Theatre ever get first run pictures? A. No, they did not.

Q. Mr. Schreiber, did you have at any [1389] time a conversation with Mr. Edward Zabel?

A. I did.

Q. Will you give us the approximate time of that conversation?

A. I met Mr. Zabel for, I believe, the first time when he came to my home either the end of July, the last week, about the last week of July, or about the first week in August, the first or second week in August.

Q. What year?

A. 1950, before we opened the theatre.

Q. Who was present at your home when that meeting took place?

A. There was Eddie Zabel, who was supposed to be the No. 2 man of the Fox organization, he and Bowser. Bowser was No. 1 in the trade, or what I

(Testimony of Alex Schreiber.)

had learned, Mr. George Bowser was No. 1 man under Skouras, and Mr. Eddie Zabel was the No. 2 man, and Eddie Zabel at that time was the head buyer and booker of all the theatres, for Fox theatres.

There was Earl Collins, the division man or the district manager for Republic pictures. There was Edmund Granger, the producer, from RKO Pictures, who has produced a lot of John Wayne pictures.

There was William Topliker. He was the broker. And there was an attorney that came with them.

There was Mr. Arnold Kreiger, my attorney, and [1390] myself.

Q. Will you tell me what was said at that meeting by Mr. Zabel or by any of the other parties in his presence, and what you said?

A. When we were all together, Mr. Topliker, the broker, says, "Alex, these are the people that I told you about that want to buy the Paradise Theatre. You asked to see the principals. Here they are." Or words to that effect.

He says, "They are ready and they have a check to give you"—I don't remember whether he says \$25,000 or \$50,000—"as a deposit to buy the Paradise Theatre only, nothing to do with the bowling alley, just the theatre, for \$550,000.

"You said you wanted to see the principals. Here they are. You know Mr. Eddie Zabel."

(Testimony of Alex Schreiber.)

I believe I said, "I heard of him or I have seen him around some exhibitor affairs or meetings."

And he said, "You know Earl Collins."

I said, "Yes, I know Earl Collins, because I spoke to Earl Collins myself about pictures for the Paradise Theatre."

He said, "You know Eddie Granger."

I said, "I know him by being the producer of the John Wayne pictures for RKO." [1391]

He says, "This is their attorney." He told me the name but I completely forgot the name and to this day I don't know the man's name.

Then, of course, I introduced Mr. Krieger as my attorney.

He said, "The offer still stands and we are here to make an offer and we brought an attorney and are ready to make the deal."

We went over the figure of \$550,000. They wanted to give me \$125,000 cash. They were to assume the mortgage of \$175,000. They were going to assume the equipment contracts, around 75,000 and rebate me the money, because I made a deposit down. There was a balance, I believe, \$175,000. There was 125 and 175 and 175—they were going to pay me at the rate of \$1,000 a month.

They said they would pay me 2 per cent or 3 per cent on that balance of \$175,000, payable \$1,000 a month.

And I told them that the interest rate was too low. It should be 5 per cent or 6 per cent.

(Testimony of Alex Schreiber.)

They said, "Well, we will straighten out the interest rate later on."

I said, "Well, wait a minute. You are going to owe me about \$175,000 at \$1,000 a month. That's a long time. How do I know I am going to get my money? How do I know that you people are going to be able to get pictures for the theatre [1392] so that I will know I will get my money?"

So Mr. Zabel said, "You leave that to me. There will be no trouble getting pictures."

And Earl Collins said, "Alex, you are not worried about getting pictures," or words to that effect. He said, "We will take care of the picture end of it. You haven't got a thing to worry about. As far as prevues are concerned, Eddie Granger will give you all his pictures prevue at the theatre. Eddie Granger will make arrangements and we will get prevues from everybody."

So I says, "I don't know. I can't make up my mind, because I like to talk to Marco Wolff," because I had a previous 30 day agreement wth Marco Wolff—— [1393]

Mr. Mitchell: Now, wait a minute. We are going into——

The Court: You said you wanted to talk to Marco Wolff.

The Witness: I wanted to talk to Marco Wolff before I made up my mind, because with the Marco Wolff setup I was to get—Marco Wolff was going to get me first run Paramount pictures in the Para-

(Testimony of Alex Schreiber.)

dise when he got through with his lawsuit. He figured he was going to win his lawsuit and if he won his lawsuit then he was going to put Paramount pictures in the Hollywood, where he had them, Hollywood Paramount, downtown Paramount. He was going to put them in the Paradise. He was going to put it in the Manchester and he hoped to put them in the Baldwin Theatre.

He said that the lawsuits were pending on the Baldwin and a lawsuit pending on the Manchester, and pending on the two downtown Paramount houses and when that was set and he was sure he would get it, we would have a five-unit Paramount first run theatres that would be equivalent to the Fox Loyola and Fox Uptown and the Fox Wilshire, the Los Angeles Fox and the fifth one was the Fox Uptown.

So, our five theatres would be equally as good and could pay the distributor as much money as Fox could. I told that to Mr. Zabel and Mr. Granger and Mr. Earl Collins and they laughed and they said, "Marco Wolff will never get you first run pictures. He has a lawsuit and nobody knows whether he is going to win it or not." So I says, "Well, if [1394] he doesn't get any first run pictures,"—and he had promised it to me by opening time because we hadn't been opened yet, he said that he would get us mostly likely the 7-day pictures because he had trouble when he opened his Southside Theatre. He couldn't get 7-day pictures but

(Testimony of Alex Schreiber.)

eventually he got 7-day pictures, and he may not be able to get me pictures immediately on 7-day run. It may take a little time—it may take three months or two months or six months, but eventually he is sure we will have 7-day pictures at the Paradise and then we will get first run pictures if he wins his lawsuit. He was sure of that, and when I told that to Mr. Zabel and Mr. Granger and Mr. Collins and the attorney was there, my attorney, they practically laughed. They said, “Marco Wolff will never get you first run, and Marco Wolff will never get you seven days. Marco Wolff isn’t liked. Nobody likes him and you are going to have plenty of trouble with Marco Wolff if he buys and books your theatre.”

I said, “Well, with all that that you say,” and I figured out that they were just saying that——

Mr. Mitchell: What he figured out is unimportant.

The Court: Don’t tell us what you figured out.

The Witness: So, I said I would have to talk to Marco Wolff and I would talk to him the next morning or that night. [1395]

I tried to get a hold of him that night. I told them I would let them know in a couple of days. And I remember distinctly calling Marco Wolff and I told him——

Mr. Corinblit: Just a minute, Mr. Schreiber. You may testify as to what conversation you had with Mr. Marco Wolff if it was in the presence of the defendant, but you cannot testify to a conversa-

(Testimony of Alex Schreiber.)

tion you had with Marco Wolff outside of the presence of the representatives of the defendants.

Q. Have you concluded the conversation that you had at that time with Mr. Zabel and the other associates in the room?

A. Well, there may have been some discussion about pictures and the general theatre business and they left, and I told them I would let them know in a few days.

Q. All right. Now, did Mr. Zabel or his associates ever acquire an interest in the Paradise Theatre? A. No.

Mr. Corinblit: May I have Exhibits 33-A, 33-B and 33-C.

I offer in evidence at this time Exhibit 33-B which is the agreement between the Los Angeles Extension Company and Venice Investment Company dated January 10, 1945.

And I also offer in evidence the deed of the Los Angeles Extension Company to Mr. Alex Schreiber, which is Exhibit 45-A. [1396]

The Court: What is the necessity of the agreement and deed in the record? There is no necessity for it, is there? There is no question but what the property was bought by Mr. Schreiber.

Mr. Corinblit: The agreement, your Honor, is the agreement pertaining to the restrictions.

The Court: Yes, I know what the agreement is.

Mr. Corinblit: Let me say this. I don't want to argue at length on this point, but we have submitted a memorandum on this matter.

(Testimony of Alex Schreiber.)

The Court: I have read your memorandum and I am still of the same opinion I was before I read it.

Mr. Corinblit: Then I don't want to trouble you with an extended argument.

Mr. Johnston: I will make an objection on the ground it is incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Corinblit: Does the objection go to the deed as well?

The Court: To the deed and the agreement.

Mr. Corinblit: All right, your Honor. I would like to complete the offer.

We will offer 33-A, which is the deed to the Loyola property as well as 33-C, which is the subsequent agreement between the Venice Investment Company and the Extension [1397] Company dated July 21, 1948.

The Court: Same objection and same ruling.

Q. (By Mr. Corinblit): Mr. Schreiber, in about February 1950, you made written contact with the film companies for pictures for the Paradise Theatre, did you not? A. I did.

Mr. Corinblit: May I have Exhibit 1-A, please. I should like to have the entire group and then I can pick them out as we go along.

Q. I will show you Plaintiff's Exhibit 1-A for identification, Mr. Schreiber, a letter from the Paradise Theatre Building Corporation to Paramount Pictures Corporation dated February 6, 1950, and ask you whether or not you sent the original thereof to Paramount? A. I did.

Q. Do you recall, Mr. Schreiber, that a dupli-

(Testimony of Alex Schreiber.)

cate copy or, rather, a separate letter but having the same contents was sent to Loew's, and that is an exhibit in evidence, Exhibit 6-A; was sent to Warners, which is Exhibit 10-A; was sent to Universal, which exhibit is already in evidence as Exhibit 14-A; was sent to RKO, Exhibit 21-A; was sent to Columbia; was sent to United Artists. Do you recall that that was done? A. I did.

Mr. Corinblit: I will offer in evidence at this time [1398] Plaintiff's Exhibit 1-A, which is the letter addressed to Paramount Pictures.

The Court: It may be received in evidence.

(The exhibit heretofore marked Plaintiff's Exhibit 1-A, was received in evidence.) [1399]

* * * * *

Mr. Corinblit: I would like to offer in evidence the similar letters that were sent to the other companies named. Exhibit 6-A.

The Clerk: Already in evidence, Mr. Corinblit.

Mr. Corinblit: 6-A is in evidence.

Exhibit 10-A, Exhibit 14-A. 14-A is in evidence.

Exhibit 21-A. That should be 21-B and Exhibit 26-A and Exhibit 30-A.

The Court: They will be received in evidence.

The Clerk: You have Exhibit 10-B here.

The Court: Yes.

The Clerk: Do you want that in evidence? You haven't said anything about that.

Mr. Corinblit: 10-B in evidence? Yes.

The Clerk: 10-A, 10-B, 21-B, 26-A and 30-A are in evidence.

(The exhibits heretofore marked Plaintiffs'

(Testimony of Alex Schreiber.)

Exhibits 10-A, 10-B, 21-B, 26-A and 30-A, were received in evidence.)

Q. (By Mr. Corinblit): Turning first to Warners, Mr. [1400] Schreiber, I show you Plaintiff's Exhibit 10-C and ask you whether or not you received this letter from the defendant Warners; 10-D and ask you whether or not you sent this letter to Warner's dated March 6, 1950, and 10-E, I will ask you whether you received this letter from Mr. Fred Greenberg of Warner's dated March 8, 1950?

A. Yes, I received this letter of February 9 from Mr. Roy Haynes.

Q. That is 10-C?

A. Yes. I sent this March 6th letter to Mr. Greenberg or Mr. Herbel on March 6th, 1950. [1401]

Q. That is 10-D.

A. And I received this letter on March 8, 1950.

Mr. Corinblit: We will offer in evidence as Plaintiff's exhibits 10-C, 10-D and 10-E.

The Court: In evidence.

The Clerk: Exhibits 10-C, 10-D and 10-E.

(The exhibits referred to were received in evidence and marked Plaintiff's Exhibits 10-C, 10-D and 10-E.)

Mr. Corinblit: We have already introduced in evidence the Metro letters. We have one more, Plaintiff's 6-F.

Q. Mr. Schreiber, I will ask you whether or not you received this letter from Mr. Hickey.

A. I did receive this letter.

Mr. Corinblit: We will offer in evidence Plaintiff's Exhibit 6-F.

(Testimony of Alex Schreiber.)

The Court: In evidence.

The Clerk: Exhibit 6-F.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 6-F.)

Q. (By Mr. Corinblit): I will show you Plaintiff's Exhibit 1-B, which is a letter, Schreiber to Paramount Pictures in New York, dated February 6, 1950, and ask you whether you sent the original of this letter to Paramount in New York. Just whether you sent it.

A. Yes, I did. [1402]

Q. And Plaintiff's Exhibit 1-C, which is a letter from Taylor to Schreiber, dated February 9, 1950, and ask you whether you received that from Mr. Taylor of Paramount.

A. Yes, I received this letter.

Q. I show you Plaintiff's Exhibit 1-D, which is a letter from Mr. Schwallberg, New York, Paramount Film Distributing Corporation, to Alex Schreiber, dated February 10, 1950, and ask you if you received that from Mr. Schwallberg.

A. Yes, I did.

Mr. Corinblit: We will offer Plaintiff's Exhibit 1-B, 1-C and 1-D in evidence, your Honor.

The Court: In evidence.

The Clerk: Plaintiff's Exhibits 1-B, 1-C and 1-D.

(The exhibits referred to were received in evidence and marked Plaintiff's Exhibits 1-B, 1-C and 1-D.)

Q. (By Mr. Corinblit): I will show you Plaintiff's Exhibit 14-B and 14-C, Mr. Schreiber. 14-B is a letter, Schreiber to Universal, dated February 6,

(Testimony of Alex Schreiber.)

1950, which is in evidence. I am sorry. I see that 14-C is already in evidence as well.

I will show you, Mr. Schreiber, a group of exhibits, the first of which is identified as 21-A, a letter Schreiber to RKO, dated February 6, 1950, and ask you whether you sent that letter to RKO.

A. This letter I sent to RKO in New York.

Q. In New York? A. To Mr. Mochrie.

Q. I will show you Plaintiff's Exhibit 21-C, which is a letter, Cohen to Schreiber, dated February 8, 1950, and ask you whether you received that letter from RKO through Mr. Cohen.

A. Yes. Mr. Cohen was the local branch manager.

Q. I will show you Plaintiff's Exhibit 21-D, which is a letter, Zimmerman of RKO to Paradise Theatre Building Corporation, dated February 23, 1950, and ask you whether you received that from Mr. Zimmerman.

A. Yes. Mr. Zimmerman was the attorney for RKO.

Mr. Corinblit: We will offer Plaintiff's Exhibits 21-A, 21-C and 21-D in evidence.

Mr. Mitchell: Your Honor, in view of your previous rulings with respect to RKO, Columbia and United Artists, which are not defendants in this action, but as to which you have permitted evidence of oral matters, may we have our objection on the ground that those matters concerning RKO, Columbia and United Artists, are incompetent, irrelevant and immaterial, go to all testimony with respect to

(Testimony of Alex Schreiber.)

those three companies, so we don't keep interrupting for that purpose?

The Court: Yes. You may have the same objection. Same ruling. Objection overruled. The exhibits may be admitted in evidence. [1404]

The Clerk: 21-A, 21-C and 21-D.

(The exhibits referred to were received in evidence and marked Plaintiff's Exhibits 21-A, 21-C and 21-D.)

Q. (By Mr. Corinblit): Mr. Schreiber, I show you Plaintiff's Exhibits 26-B, 26-C and 26-D. 26-B is a letter, Schreiber to Columbia, dated February 6, 1950. I ask you whether you sent the original of that letter to Columbia.

A. Yes. This is a letter to Columbia in New York, attention Abe Montague. He was the general sales manager.

Q. And a letter, March 6, 1950, Schreiber to Columbia, attention branch manager. That is in Los Angeles. Did you send that letter?

A. Yes. I sent it to the branch manager here in Los Angeles.

Q. 26-D, letter from Schreiber to Montague, dated March 6, 1950. Did you send that letter to Mr. Montague of Columbia Pictures Corporation in New York?

A. Yes, I did.

Mr. Corinblit: We will offer Plaintiff's Exhibits 26-B, 26-C and 26-D in evidence, your Honor.

The Court: In evidence.

The Clerk: 26-B, -C and -D.

(The exhibits referred to were received in

(Testimony of Alex Schreiber.)

evidence and marked as Plaintiff's Exhibits 26-B, 26-C and 26-D.) [1405]

Q. (By Mr. Corinblit): I will show you Plaintiff's Exhibit 30-B, a letter Schreiber to United Artists Corporation, dated February 6, 1950, and ask you if you sent the original of that letter to United Artists in Los Angeles. A. I did.

Q. I will show you Plaintiff's Exhibit 30-C, which is a letter, Schreiber to United Artists in Los Angeles, and ask you whether you sent the original of that letter to Los Angeles. A. I did.

Q. To United Artists Corporation?

A. I did.

Q. I show you a letter, Exhibit 30-D, which is a letter, Schreiber to Mr. Grad Sears, United Artists Corporation in New York, dated March 6, 1950, and ask you whether you sent that letter to Mr. Sears in New York, United Artists Corporation.

A. Yes, I did.

Q. I will show you Plaintiff's Exhibit 30-E, which is a letter, United Artists Corporation, by J. J. O'Laughlin, branch manager, to Alex Schreiber, March 9, 1950, and ask you if United Artists through Mr. O'Laughlin sent that to you.

A. Yes. I remember that one distinctly.

Q. I will show you Plaintiff's Exhibit 30-F, which is a letter, Schreiber to United Artists Corporation in Los Angeles, dated March 22, 1950, and ask you—I notice there is a date [1406] written on here of 1959. That is intended as 1950, is that right?

A. That's right.

(Testimony of Alex Schreiber.)

Q. I will ask you if you sent that letter to United Artists Corporation.

Mr. Johnston: You are speaking of the distributing company, are you not, Mr. Corinblit?

Mr. Corinblit: Yes, that's right.

The Witness: Yes.

Mr. Corinblit: We will offer in evidence Plaintiff's Exhibits 30-B, 30-C, 30-D, 30-E and 30-F.

The Court: In evidence.

The Clerk: Exhibits 30-B, 30-C, 30-D, 30-E and 30-F.

(The exhibits referred to were received in evidence and marked as Plaintiff's Exhibits 30-B, 30-C, 30-D, 30-E and 30-F.)

Mr. Corinblit: That completes this particular offer at this time, your Honor.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to [1407] you for decision. You will now be excused until 15 minutes after 11:00. Court will stand in recess until 11:15.

(Recess.) [1408]

The Court: Is it stipulated the jury are present and in the jury box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: Yes.

The Court: You may proceed.

(Testimony of Alex Schreiber.)

Q. (By Mr. Corinblit): Mr. Schreiber, turning first to the distributor Universal. After you wrote the letter identified as Plaintiff's 14-A inquiring about first-run pictures and received a reply from Mr. Blake, which is Exhibit 14-C for identification, which has already been admitted into evidence, and I will show you that——

A. Yes, I received that.

Q. Now, I call your attention to the reference in the last paragraph which states:

"But *it our* thought that it would be better for you to discuss this in detail with our western district manager, Mr. Barney Rose, and/or our Los Angeles branch manager Mr. William Marriott when you come out here in March."

Now, Mr. Schreiber, did you have a discussion with Mr. William Marriott after you received this letter? A. I did.

Q. And what was the approximate date of that meeting, if you recall?

A. I believe that was in April 1950 before we opened [1409] the theatre.

Q. Now, where did you go to talk to Mr. Marriott?

A. In Mr. Marriott's office, I believe. I went with my son Max to visit—to discuss this with Mr. Marriott.

Q. And where is Mr. Marriott's office located? Is that where the Universal office is in Los Angeles?

A. Yes, they are on South Vermont Avenue.

Q. Is there an area down near Vermont and

(Testimony of Alex Schreiber.)

Washington Boulevard, an area that is referred to as Film Row? A. That is correct.

Q. And that is the place where all the distributors have their Los Angeles offices, is that correct?

A. Most of them have them right on Vermont, although Paramount had theirs on the side street and Metro has theirs on Cordova Street.

Q. But they are all within a few blocks of each other? A. That is correct.

Q. All right. Now, when you went to see Mr. Marriott and had a discussion with him who were present? A. My son Max.

Q. And Mr. Marriott? A. That is right.

Q. And yourself? A. That is right.

Q. Anybody else? [1410]

A. No, nobody else.

Q. Will you tell me what you said to Mr. Marriott and what Mr. Marriott said to you?

A. Well, I told Mr. Marriott that my son and I—first of all I came to meet him personally because I believe that was the first time we had met him and we came to see him about getting first-run Universal pictures nonexclusive in the Paramount Theatre, and that we would like to run their pictures; that we were going to have a beautiful theatre. We expected to open real soon and we were sure that we would be able to pay the distributor or Universal a large film rental on their bigger and better pictures if we were permitted or had the opportunity to negotiate with him for first-run pictures.

(Testimony of Alex Schreiber.)

Mr. Marriott seemed to be very evasive and——

Mr. Mitchell: I move that be stricken out.

The Court: It may go out.

Mr. Mitchell: Can't this witness be instructed to say what they said instead of making these comments?

The Court: It is not what the party seemed to think but what they said and did.

The Witness: I am sorry. I just can't—I can't seem to remember that.

He said that he couldn't give us any first-run pictures; that he is just the branch manager; that it would still have [1411] to be up to Mr. Barney Rose or Mr. Blake or New York to make the decision, but he was sure that they wouldn't get the pictures because they were playing a combination of the five theatres and that he was sure we could not break in or we could not play day and date with the combination that was now playing their pictures.

I believe I told him all about the theatre and told him that I believed that Universal pictures one time or another had played at the Loyola Theatre, which was just three blocks from our Paradise, on the same side of the street; that we were going to have a larger theatre than the Loyola and if the Loyola would have played their pictures first run with downtown, or words to that effect, then Hollywood and the first run—I saw no reason why we couldn't play it; that the Fox people through their Loyola Theatre have established Westchester as a first-run area, a community by itself.

(Testimony of Alex Schreiber.)

And I am pretty sure I told him that because I told practically all the distributors the same thing, that Westchester was a separate community and the Loyola Theatre established it as a separate community by playing pretty near everybody's pictures first run.

And he, of course, said: "Well, I just work here," or words to that effect. It wasn't him. He didn't have the authority. I would have to take it up with New York or [1412] Barney Rose, who was a division manager or district manager, or Mr. Blake. He couldn't do any more. He knows the neighborhood. He goes to the airport quite often. It looks like it is going to be a beautiful theatre and we should do good business.

Now, I made a memorandum of that meeting and I don't know if there is anything else that I told him at that time. I would have to refer to my memorandum. [1413]

Q. All right. I think you have stated substantially all that is contained in your memorandum, Mr. Schreiber, but I will show you Plaintiff's Exhibit 14-D, which is the memorandum. I will first ask you whether you made this memorandum on or about the date of the meeting.

A. This memorandum has a date of April 12th at 1:15 to 1:45 in the afternoon. That would be 1950. I made this memorandum either that night, the next day, or the second day. I had this memorandum made.

Q. All right. I will ask you if that memorandum refreshes your recollection in any way as to

(Testimony of Alex Schreiber.)

any other matters that you have not testified to concerning your conversation with Mr. Marriott.

A. Yes. Mr. Marriott said that Mr. Al O'Keefe, who was one of the sales executives in New York, asked him if I had been in the office yet to see him. He said naturally he told Mr. O'Keefe that I hadn't been in the office.

Yes, that is about what I said. I may have used a different word here or there.

Q. Now, Mr. Schreiber, the Paradise Theatre never obtained Universal pictures on first run Los Angeles during the period August 1950 to September 1951, did they?

A. We did not receive any Universal pictures first run.

Q. Now, turning to Loew's for a moment, already in evidence are the letters of February 6, 1950, that you sent to [1414] Los Angeles and New York requesting first run pictures from Loew's, the opportunity of first run pictures for Loew's, and the replies from Loew's.

Did you subsequently have a conversation with representatives of Loew's in Los Angeles?

A. I did.

Q. About approximately when was that conversation?

A. That was in March or April 1950.

Q. All right. Where did that conversation take place?

A. At the Metro office on Cordova Street in the Film Row area.

(Testimony of Alex Schreiber.)

Q. In Los Angeles? A. In Los Angeles.

Q. Who was present at that meeting?

A. My son Max and I visited the Metro office and we met Mr. Hickey.

Mr. Hickey called in the office, when we got there, he called in Mr. Sam Gardner, who was one of his assistants or district managers or division managers. He called in Mr. Tom Aspell, who was the branch manager, and he called in, I believe, a fellow by the name of Calihan, who was the office manager, and he called in Mr., I believe, Alex Weismann, a city salesman, all in the room at the same time.

Naturally, we introduced ourselves to all these gentlemen and we started to tell them, Max or I, I did most of [1415] the talking, we told them we were going to build this Paradise Theatre, told them about the seating capacity, the location, and, of course, they acknowledged that they knew about the theatre going up, that New York told them that I was going to come in, or they suggested I go in and see them.

He said he had copies of the letters, he had my letter, and I think Mr. Hickey said something about expecting me to come in sooner.

We talked about first run pictures. I told Mr. Hickey and the gentlemen in the room that I saw no reason why we can't have an opportunity to negotiate for first run Metro pictures, non-exclusive, with the only clearance that we asked was over the

(Testimony of Alex Schreiber.)

Loyola Theatre only, which is just three blocks from us.

That Westchester was a separate community, it had been proved as a separate community by the Fox Theatre people, because they played Metro pictures at one time or another in Westchester day and date with Los Angeles downtown, day and date with Hollywood, that they had played day and date in the Loyola, and I saw no reason why we can't have first run pictures the same as the Fox Theatres.

That we were going to be a bigger theatre, and we were going to be as nice, we would charge as much money.

I practically pleaded with them to give us an opportunity to run first run pictures the same as the Fox [1416] theatre, that we were on the same side of the street, just three blocks apart.

The answer was, "No, we can't give you them, and the pictures we ran was a long time ago and they were small pictures, and it don't mean nothing, and we are not selling nobody pictures first run except the Grauman's Egyptian and Loew's State," and I believe he said the Fox Wilshire. I am not sure at that time because at one time Metro did serve three first run houses, and they weren't doing it any more.

I said, "That's all right, you may not be doing it now, because Fox is using most of their own pictures in the Loyola Theatre. They wouldn't have room to play Metro, Paramount, Fox, Universal, Columbia, RKO, they can't, it is impossible, but

(Testimony of Alex Schreiber.)

they did play some of your pictures, and I presume"——

I think I said to them if they had some open time and they needed a Metro picture, that they would give it to them.

He said they would not give it to them.

Then I told them about the business that I understood—when I checked the Loyola Theatre, the business they were doing in there, that the area was a good area and I told them about the houses, I told them about the business. In other words, I gave the best sales talk that I could, literally speaking, to them, to try to convince them that they [1417] should sell us or negotiate first run non-exclusive Metro pictures.

The answer practically was, "You can have 7 days, bidding against La Tijera and the Inglewood theatres," I believe he said.

I told him, "Why do we have to bid against those?"

He said, "Well, J. Isenberg, the attorney from New York, was here, and Mr. Gardner drove Mr. Isenberg all around the area," and they had decided that we are in competition with the Inglewood theatres and the La Tijera, and, therefore, we got to bid against these theatres.

Of course, I objected to that and we left the office. We just couldn't get anywhere outside of the fact that they said we would have to bid against these Inglewood theatres.

Now, I got a long note on that and I am sure

(Testimony of Alex Schreiber.)

when I made that memorandum, there may be some other things in there.

Q. Mr. Schreiber, I will show you Plaintiff's Exhibit 6-G for identification and ask you whether or not this is a memorandum which you prepared or dictated and had typed on or about March 30, 1950, about the time of the meeting? First, could you answer that question? A. Yes.

Q. Now, I will ask you to examine that exhibit 6-G and ask you if that refreshes your recollection as to any other [1418] matters that took place at the meeting with Mr. Hickey and the other people.

A. In this first paragraph——

Q. Don't read that to the jury, Mr. Schreiber. The only question is, does it refresh your recollection as to what was said?

A. Yes. This—can I tell in my own words now without reading it? [1419]

Q. In other words, is your recollection refreshed as to any matter contained therein? What do you remember about it?

A. In talking to Mr. Hickey about the first run, and I thought we were entitled to the first run in Westchester because the Fox Theatre people already established first run, Mr. Hickey said no, he couldn't do it and after some time he said he would like to see—he would like to see Loew's take back the Loew's Theatre and run their product in there first run only, just in the one theatre, and run in about 14 or 15 other theatres around the area so that he could get more film rental. But he knows it

(Testimony of Alex Schreiber.)

wouldn't be done or couldn't be done but that is—definitely he did tell my son and I that.

Well, I believe I said that, previously, about we thought we could give the film distributors equally as much money as the Loyola was paying for product. And I also—I don't know whether I said that I showed Mr. Hickey some airplane pictures of the area showing the growth and also Mr. Hickey said that he didn't realize that that area was growing so fast; that he knew the area but he didn't realize it was growing as fast and that there were as many houses there. And I also told him about we were contemplating building two more theatres in the Valley. That was the one on Laurel Canyon and Weddington and the other was Laurel Canyon and [1420] Victory Boulevard. We were supposed to build a theatre and Mr. Hickey said he wished that the theatres were built now and he would have sold me—he would sell us first run pictures in the Valley.

Q. Did Loew's sell the Paradise Theatre first run pictures? A. They did not.

Q. Mr. Schreiber, after you had written your letter of February 6, 1950—incidentally, it is established—let us get it clear again that the letter of February 6, 1950, was drafted by Mr. Simon, to a substantial extent—I don't know whether it was completely drafted by him, but drafted to a substantial extent by Mr. Simon, is that correct?

A. I don't remember whether he helped me with the first run or not. He may have.

(Testimony of Alex Schreiber.)

Q. I think he testified that he did. Now, Mr. Schreiber, after you sent the letter to New York and to Los Angeles, which are Plaintiff's Exhibit 10-A and 10-B, which are duplicates of the letter already read into evidence, you testified that you received a letter from Mr. Haynes dated February 9, 1950, which I would like to read to the jury. It is already in evidence. It is Exhibit 10-C. [1421]

* * * * *

Then as you testified, you sent them a letter dated March 6th, which is Exhibit 10-D which reads as follows after the salutation to Warners: [1422]

* * * * *

Then on March 9th you received a letter from Mr. Greenberg, Exhibit 10-E, which is in evidence. It reads—it is on the stationery of Warner Bros. Pictures Distributing Corporation. It is addressed to you and states:

* * * * *

Now, after that correspondence, Mr. Schreiber, did you have a conversation with representatives of Warner Bros. in Los Angeles concerning the Paradise Theatre? A. I did.

Q. And with whom was that conversation?

A. I went to Warner Bros. with my son.

Q. And who was present at the meeting?

A. Mr. Herbel, the district manager, and Mr. Fred Greenberg, the branch manager. [1423]

Q. And will you give the approximate time of that, please?

A. That was in March or April of 1950.

(Testimony of Alex Schreiber.)

Q. Now, what was said by you and what was said by either Mr. Herbel or Mr. Greenberg at that meeting?

A. Well, after the proper introductions I asked Mr. Herbel and Mr. Greenberg for the opportunity to run the Warner pictures first run non-exclusive with a clearance only over the Loyola Theatre—only in Westchester, and day and date with the other Warner theatres.

And I told Mr. Herbel the same thing about Fox establishing Westchester as a separate community or separate city and that I saw no reason why, if Fox can have their pictures, and I was pretty sure they had played one or two pictures up to that time, and if they did, I told them the other distributors were all playing their pictures, one or two or three previous to this date in the Westchester area, and I was pretty sure he had played one or two or maybe three or four Warner pictures in the Loyola first run day and date with downtown and day and date with Hollywood and day and date with Wilshire Boulevard, why can't we have non-exclusive first run pictures with clearance only over the Loyola. We didn't care who else played the pictures and I told him about the beautiful theatre and what we planned to have and some of the appointments and some of the [1424] equipment and words to that effect. I described the Paradise Theatre—what it was going to be, and it was going to be open soon, and I am sure we could pay the distributors as much money as they were getting in any other first

(Testimony of Alex Schreiber.)

run house—as much as the Loyola paid them for their pictures when they played them—maybe more than they received from the Loyola because we were going to have a bigger house. It would be a newer house. We would like to play their pictures first run non-exclusive, and Mr. Herbel did most of the talking, and Mr. Herbel said, “No, that is impossible. We can’t sell you first run. We have our own three theatres. They are our own. And we lost last year \$80,000 in our theatres and we are not going to permit any other theatres to run day and date with us because we may lose more money.”

And I, of course, when he said that, I practically laughed and I told him how ridiculous it was to think that people from Westchester were going to run all the way downtown or in Hollywood or to Wilshire Boulevard to see a picture, and if we had it at our place, they would come to our place and he would get more film rental from us than he would from what he would lose it percentage-wise from those three theatres if people went from our Westchester area to any one of those three theatres and he said, “Well, regardless of what—” I think, he or they are not going to [1425] sell us first run pictures—that he didn’t know exactly why they lost \$80,000 and I told him he couldn’t blame it on the Paradise, the Paradise wasn’t open, but why they lost it he didn’t know, but he thought it might be very bad pictures, it may have been the times and I think at that time he named some pictures or told me about a lot of pictures that were very disap-

(Testimony of Alex Schreiber.)

pointing in receipts and had everybody in the industry puzzled as to why it wasn't doing more business.

Then he told me—he said: “We checked the neighborhood and you have got to bid for our pictures. We will let you bid on the 7-day availability.”

And of course we objected to that because we told him we were not in substantial competition, or words to that effect, with any of these Inglewood theatres. We told him that we would play day and date if we can't get first run pictures, we will play the 7-day on negotiation. We wanted to negotiate for the pictures because there is quite a difference between negotiating and bidding. We would be glad to do that, but we didn't want to bid against theatres that were not in substantial competition with us, and we saw no reason for it, and we would play day and date with them and we had what was supposed to be a more extensive theatre when it was completed than practically any other theatre in the entire area and words to that effect. [1426]

Now, I also made a memorandum on that. There may be some other things, but I think that is the highlights of my discussions and my son's. [1427]

Q. I will show you Plaintiff's Exhibit 10-F-1, and ask you if this is a memorandum which you dictated and had prepared at or about the time of the meeting with Mr. Herbel and Mr. Greenberg? Is that the memorandum you had prepared?

(Testimony of Alex Schreiber.)

A. This is the memorandum and it is dated March 30, 1950.

Q. All right. Now, will you examine that and state if that refreshes your recollection as to any additional matters or as to any of the matters that you have testified about.

A. Well, first of all, he said that he discussed it with New York and it was his decision with New York not to serve us first run.

Another thing I see, I just saw it at a glance, he didn't know what position Warners would take after the divorcement, because the government was making these producer-owned theatres separate the theatres from the product, and that is what he had reference to when he said, well, he didn't know what they would do or what their opinion would be after the divorcement when the theatres would be separated from production.

He also told me about trouble that Marco Wolff was having, and he also made a request for first run product for his Baldwin Theatre and he wasn't going to get it, or he is trying to get first run product for the Baldwin and he didn't [1428] get it.

There is three other matters that I didn't mention.

Q. Is your memory refreshed with respect to certain matters? A. Yes.

Q. All right.

A. First of all, I make a memorandum here that I did not talk to him about the 7 day availability bidding, like I did with the other distributors.

(Testimony of Alex Schreiber.)

I had made a memorandum here I did not tell him that Metro had offered me 7 days bidding, because I have a memorandum here that I asked for first run only and didn't think I should mention the Metro to him, because he didn't mention it to me, and previous to this I made a statement that we talked about it.

I may get some of these meetings a little bit mixed up with one another, because that was my talk with practically everyone, and I thought I had mentioned it to Mr. Herbel, but according to my memorandum, I did not mention the 7 day and he did not mention it to me.

But Mr. Herbel did say that at one time when I told him we were also planning two theatres in the Valley, he told me that Warner Bros. was considering very seriously going into the Valley, also, with a theatre, but because of the government decision breaking up the theatres from production, they had to give up the idea. [1429]

Q. Mr. Schreiber, did the Paradise Theatre ever get Warner Bros. first run during the period August 23, 1950, to September, 1951?

A. They never received one picture.

Q. After your letter of February 6, 1950, to Paramount, you received a letter which is Exhibit 1-C, from Mr. Taylor, dated February 9, 1950, which I would like to read to the jury at this time, addressed to you, to Mr. Schreiber: [1430]

* * * * *

The very next day after you had received this

(Testimony of Alex Schreiber.)

letter from Mr. Taylor which I have just read, you testified you received a letter from Mr. Schwallberg from New York which, after the address to you, said:

* * * * *

Now, after you had received the letter from Mr. Taylor telling you they had franchises and the letter from Mr. Schwallberg stating he was asking for a report, did you visit and have a discussion with Mr. Taylor in Los Angeles? A. I did.

Q. Who was present at that meeting?

A. My son Max and Mr. Taylor and Mr. George Smith, the division or district manager for Paramount Pictures. [1431]

Q. Approximately when did that meeting take place?

A. I believe that was in March or April, early part of March or April.

Q. Of 1950? A. 1950.

Q. What was said by you and what was said by Mr. Taylor or Mr. Smith at that meeting?

A. That meeting, I also asked Mr. Taylor and Mr. Smith for an opportunity to run their pictures non-exclusive first run Los Angeles in the Westchester area.

Mr. Smith did most of the talking, because he was the superior to Mr. Taylor. He told me that that was practically impossible and that they wouldn't consider it, that they had a franchise with the Hollywood Paramount and with the Downtown Paramount Theatre and that was the only two

(Testimony of Alex Schreiber.)

theatres that were running their pictures first run and, therefore, we could not get first run pictures.

When he told me that was the only two theatres that were running Paramount pictures first run, I immediately called his attention to the fact that the Loyola Theatre played Paramount pictures first run Los Angeles day and date with Hollywood and day and date with downtown at one time or another, and why can't we run Paramount pictures first run? The Fox theatre people, they managed to run first run in Westchester, and why can't we run first run?

I told him about the theatre, the size of the theatre, what we had planned to build, and it would be finished soon, in May or June or July, whatever time I used, and we would have just as good opportunity to gross as much money as the Loyola Theatre, that we would be able to pay them as much film rental as the Loyola Theatre.

That Fox can get what they want, and they were getting what they wanted. They were getting pictures first run from practically every distributor in Westchester. Why can't we get them?

We practically begged each one of these fellows, we told them we had a big investment, we had undertaken a loan obligation, and why can't we get pictures? That we would be open soon and wanted the pictures.

He told us again they had a franchise and they had to give them to the Paramount, and they weren't going to do anything, and there was a lawsuit pending, and the Baldwin requested first run,

(Testimony of Alex Schreiber.)

and they didn't give it to them either, and that was in court, the Paramount case was in court and until it was all settled, they weren't going to sell us any first run pictures.

I told them I understood franchises were illegal, that the government had ruled franchises are illegal, and he told me in words and effect, "Illegal or not illegal, we are not going to sell you first run pictures." [1433]

That they had made a study of the area, they know the area, and the best they will do for us is they were going to have two 7 day availability pictures, and they would give us an opportunity to bid for one of the 7 day pictures, and they also are going to have two 14 day pictures. They studied the area and it was a big area, and it was quite a problem, or words to that effect, and we could bid for the 7 day and if we lost for the 7 day, we would have to bid for the 14.

I told them, "We don't want to bid. We want to negotiate. If we can't get first run, we would like to negotiate for their pictures. We don't want to bid for them."

We got the same answer from Mr. Smith as he stated originally, you got to bid for the pictures and there is going to be two 7 days and two 14 days, and that was the best they would do for us, and they either had discussed it with New York or decided themselves on it.

I also have a memorandum on that, Mr. Corinblit. Maybe there is some more stuff in there, but

(Testimony of Alex Schreiber.)

the highlight was why can Fox get first run pictures and their pictures, and we can't get no Paramount pictures.

Q. I will show you Plaintiff's—

Mr. Mitchell: I move the highlight be stricken as argument.

The Court: It may go out.

Q. (By Mr. Corinblit): Mr. Schreiber, I will show you [1434] Plaintiff's Exhibit 1-E and ask you whether or not that is a memorandum which you prepared at or about the time of this meeting you describe with Mr. Smith and Mr. Taylor.

A. Yes, April 12, 1950. [1435]

Q. That was the date of that meeting, is that correct? A. That's right.

Q. All right. Now, I will ask you to examine Plaintiff's Exhibit 1-E and tell me if that refreshes your recollection as to any other matters that were stated at that meeting or to any matters that you have testified to?

A. Well, when I had the talk with them, the discussion, Mr. Taylor said to me, "Evidently you don't read your mail," and I asked him what he meant.

He said, well, he said, "Didn't you get a letter from me that we told you that we had a franchise?"

That is where I answered him that I thought that the franchises were illegal. He wanted me to bid for the seven-day or 14-day availability and he would send me the forms. They send out the forms to ask you to make an offer, and I said, no, I would

(Testimony of Alex Schreiber.)

negotiate, would be glad to negotiate with them if we couldn't get first run product, and he told me that it is practically the same thing, bidding and negotiating, and I told him there is no such thing, that the two are together just as different as there is day and night.

I didn't use "day and night," but I told him they were different and I still insist that they are different.

Q. Mr. Schreiber, if that refreshes your recollection you may testify to it, but don't read from it.

A. Yes, it does refresh my recollection. They stated [1436] at that meeting that they had a leap-frog availability or clearance and I told them that I had never heard of the words "leap frog," what does he mean by "leap frog," so he started to explain that if this theatre takes clearance over this theatre and this theatre takes clearance over this theatre and this theatre takes clearance over that theatre, it is just leap-frogging all the way down so the fellow on the end can get clearance on the fellow on this end.

I told him I never heard of it before and that the distance between one end and the other end was just ridiculous, which included the Southside Theatre, which was so many miles away from us, and he said, "Well, that is the leap-frog clearance," and they were going to have two prints.

He also made mention—this memorandum reminds me that he made mention about a dividing line. They didn't know where they were going to

(Testimony of Alex Schreiber.)

have the dividing line and it was almost impossible to say where the dividing line was.

I called their attention that just recently to this meeting on April 12th they had served the Loyola Theatre with Captain China, just recently. I called that to their attention.

When I called his attention to Captain China he said it was just a coincidence, that the Loyola group of Fox houses played Captain China; the two Paramount Theatres were all booked up in their bookings and they didn't have room to [1437] play their pictures in the two Paramount houses, so they played Captain China in this group.

So I said, "Well, what about the other pictures that had played there previously to that," so Mr. Smith or Mr. Taylor said, "Well, that was a coincidence also. It was just one of those things where the Paramount was booked up and they couldn't run it and they were four to eight weeks behind in their dates and rather than wait for a later play date," or words to that effect, they gave it to the Fox group. And, of course, when they told me that I told them to give me some of those pictures too and then Mr. Taylor in a joking way said to me, "Well, we would like to sell you some of our newsreels—we will sell you some of our newsreels first run."

And then it also refreshes my memory. I told him there were many—there was over 31,000 people in that area and I thought the people of Westchester were entitled to see first-run pictures just as

(Testimony of Alex Schreiber.)

soon as possible without having to wait to a later date to see the pictures.

Q. Now, Mr. Schreiber, did you in the Paradise Theatre ever receive any first-run pictures from Paramount during the period August, 1950 to September, 1951? A. Not one picture.

Mr. Corinblit: That is all.

The Court: Ladies and gentlemen of the jury, we are [1438] about to take another recess, and again it is my duty to admonish you that you are not to discuss this case with anyone, you are not to permit anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition we will now recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same day.) [1439]

July 25, 1956, 2:00 o'clock p.m.

The Court: Is it stipulated the jury is present in the box?

Mr. Corinblit: So stipulated.

Mr. Johnson: Yes.

The Court: You may proceed.

ALEX SCHREIBER

the witness on the stand at the time of the recess, having been previously duly sworn, was examined and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Corinblit): Mr. Schreiber, we had finished talking about your first visits to Paramount.

I will first state that in evidence are the letters you sent to Columbia in February, 1950, asking the representatives of Columbia if they would license you a non-exclusive first run, Exhibits 26-A and 26-B, which are the same as the other letters.

There is a letter dated March 6, 1950, which is Plaintiff's Exhibit 26-D, which I would like to read. It is a letter from Schreiber to Montague, Columbia Pictures Corporation, New York. [1440]

"Dear Abe:

"I did not receive an answer to my letter of February 6 regarding the first run product for the Paradise Theatre, Los Angeles. I presume you have been very busy and will abide an answer at your earliest convenience.

"Sincerely yours."

Now, subsequently, after this letter, did you have a discussion with representatives of Columbia in Los Angeles? A. I did.

Q. With whom did you have that conversation?

A. Mr. Wayne Ball. He was the branch manager at the time.

Q. Who was present besides Mr. Ball and yourself?

(Testimony of Alex Schreiber.)

A. I believe my son Max was with me.

Q. Approximately what date was that meeting?

A. I believe that was in March or April.

Q. All right. Now, will you tell us what you said to Mr. Ball and what Mr. Ball—will you identify Mr. Ball, please? He was branch manager, did you testify?

A. I believe he was branch manager.

Q. Now, will you tell us what you said and what Mr. Ball said?

A. When I met Mr. Ball, I asked if I could see Mr. Safron also, Jerry Safron, because Jerry Safron was the district [1441] manager of this area of Columbia Pictures.

Mr. Ball told me he was not in, but he would be glad to talk to me.

I spoke to Mr. Ball and requested first run, an opportunity to buy first run non-exclusive their pictures in Los Angeles.

Mr. Ball told me that we couldn't get first run on their pictures, that they were already committed, or they were already sold to the other theatres, I believe it was RKO Pantages and Hillstreet, and there was no chance for us to get first run pictures, and if they gave them to us, the theatres in Inglewood would want it, other areas would demand a first run, and they just couldn't give out a first run, multiple first run, or words to that effect.

In fact, he told me that the La Tijera Theatre tried to get first run on Columbia pictures and they refused it, also. In fact, they said that the La

(Testimony of Alex Schreiber.)

Tijera started a lawsuit against Columbia to get first run pictures and they did not get the pictures.

And he was positive or he was sure that we would not get first run Los Angeles on Columbia pictures.

He told me that he knew the Fox Theatre people very well and they are not doing much business at the Loyola Theatre and, in fact, they expressed an opinion to him that they thought that they would like to go on, or should go to a [1442] 21 day house.

I told him he was just mistaken in his figures about what the Loyola business was, that I had checked the house and they were doing a very big business.

I naturally explained to him that I thought we should have an opportunity to play the pictures first run in Westchester day and date with the other theatres that they were playing first run, because we were going to have a larger theatre or as large as the Loyola Theatre.

I believe I showed him some pictures. I told him about the new theatre, I told him about the size, I told him about the possibility that we could gross as much business as the Loyola Theatre, and I pointed out all the fine features that I thought it was necessary to convince him that we were entitled to first run pictures.

And I told him, I am pretty sure, that we didn't want any clearance on any theatre except the Loyola Theatre, that is the only theatre we wanted clearance on as far as first run pictures were concerned.

(Testimony of Alex Schreiber.)

I don't remember whether he said anything about we would have to bid for 7 day against the Inglewood houses or not.

I have a memorandum on that meeting, also, and if I may refresh my memory, I can tell you whether we discussed 7 day or not. [1443]

Q. I will show you, Mr. Schreiber, what has been marked as Plaintiff's Exhibit 26-E for identification and ask you first if you prepared or caused to be prepared the Plaintiff's Exhibit 26-E?

A. I did.

Q. And did you cause that to be prepared on or about the time of the meeting?

A. After the meeting of April 12th when I visited Mr. Ball with my son Max.

Q. I will ask you to examine Exhibit 26-E and state if anything in there refreshes your recollection as to any other subjects that were discussed between you and Mr. Ball or with respect to anything else that you have testified to?

A. He told me that we couldn't play their pictures with the other first run houses. However, if the combinations that were now using their product first run don't play the pictures then he will give us an opportunity to play the pictures, to bid for the first run pictures against the Loyola Theatre, but he didn't think that would ever happen.

He did offer us the 7-day availability but said we would have to bid against Inglewood and that was the advice of their legal department—Mr. Irving Morris, advice of legal department they would not

(Testimony of Alex Schreiber.)

let us have first run and he [1444] also made mention about that they did not answer my letters on the advice of New York because New York didn't believe in answering letters because so many lawsuits that were pending, and they didn't want to write something that may start a lawsuit or create one, but he thought I was at least entitled to the courtesy of an answer to my letter.

I told him that I saw no reason why we can't have the first run product because the Loyola was using practically everybody's product at one time or another first run, and he told me that he thought it was out of the ordinary if I would get first run pictures there.

He asked me if I thought Inglewood was entitled to first run and I told him yes, that they were a separate community, far away from us and that they would be entitled to it also on account of the population, and that we thought we were entitled to first run and would like to play their pictures first run because we wanted to take advantage of all the newspaper publicity on the first run pictures, the articles that appear in the movie magazines, what is said about the pictures over the radio, and all the money that is spent—literally all the money that is spent advertising these pictures by playing the pictures early and playing them on first run. By doing that we could take advantage of all of that advertising.

I told them I was planning to go to New York to see [1445] Mr. Montague or Mr. Rube Jackner but

(Testimony of Alex Schreiber.)

not for the purpose of going over his head or Jerry Safron's head and that I wanted to be in position to tell them when I was in New York that I already talked to Mr. Ball and Mr. Safron, but I was sorry Mr. Safron wasn't in; and that I was sure that New York would have the final say on who could get the pictures and who could not.

We also talked about some of the new theatres, and the old theatres that weren't doing very much business and the distributors were at a loss to know why—what happened to business, that there wasn't, that they weren't doing the business they anticipated, and that was brought up at the discussion about he knew the Fox Theatre people—he was very close to them and they weren't doing the business at the Loyola they expected, and they thought they ought to go to 21 days or wished they could go to 21 days.

Q. Mr. Schreiber, after this conversation with Mr. Ball, it is also true, is it not, during the period August 23, 1950, to September, 1951, you never received any first run pictures from Columbia, is that correct?

A. We did not receive one picture from Columbia first run.

Q. With respect to RKO in evidence are the letters of February 6, 1950, which you wrote to Los Angeles and to New York, and also the letter of February 8, 1950, to Mr. [1446] Cohen in which he just states: "You will get an answer" and then the letter from Mr. Zimmerman to Paradise Thea-

(Testimony of Alex Schreiber.)

tre, February 23, 1950, which reads as follows. It is addressed to Paradise Theatre Building Corporation and reads:

* * * * *

Now, subsequent to this letter, Mr. Schreiber, you had a conversation with representatives of RKO in Los Angeles, is that right? [1447]

A. I did.

Q. And with whom was that conversation?

A. With Harry Cohen, the branch manager of RKO Pictures.

Q. Where did you have that meeting?

A. At the RKO office on South Vermont Street.

Q. And who were present?

A. I am not sure whether my son was there with me or not. If he was there, that would be just the three of us.

Q. About when did the meeting take place?

A. In March or April.

Q. 1950? A. 1950.

Q. Will you tell us what was said and what Mr. Cohen said?

A. I went in to meet Mr. Cohen. I hadn't met him yet and I went in to introduce myself to him and if my son was with me, introduced my son.

I took my son along with me because in most places—because when I would go to Detroit, I wanted him to know, if my son came into the office who he was, and I told Mr. Cohen that we wanted to get acquainted and after receiving the letter from Mr. Zimmerman, from the legal department, I

(Testimony of Alex Schreiber.)

didn't think there was much that he could do because after [1448] all he had to follow the instructions of New York and he, of course, said that he was following New York's instructions and if we wanted pictures we would have to bid against the Inglewood theatres. I told him we came in to buy first run pictures and he said there was nothing he could do; that it was strictly in the hands of New York. They would decide who should get the pictures and who shouldn't, or words to that effect. I don't think we stayed with Mr. Cohen very long except that I believe he said he knew the area and it should be very profitable.

He said it was a fast growing area and I don't know whether we had shown him the pictures of the proposed theatre, and whether I told him all of the fine features, but I believe I did.

Whether I made that memorandum or not, I don't know, but most likely I told him about what we planned to build and how we were going to build it and the size and all of the fine features that we were planning because I feel pretty sure we told him that. [1449]

Q. Mr. Schreiber, I show you Plaintiff's Exhibit 21-E and ask you if you prepared or caused this memorandum to be prepared on or about the date that it bears.

A. Yes. That was prepared on April 13, 1950. It was late in the afternoon. I knew we weren't there very long.

Q. When was the meeting?

(Testimony of Alex Schreiber.)

A. April 13th, from about 4:15 p.m. to about 5:15 p.m.

Q. Will you examine Plaintiff's Exhibit 21-E and see if that document refreshes your recollection in any way concerning any other matters that were discussed with Mr. Cohen or any matters that you may have testified about.

A. Well, it verifies that my son Max was with me.

I also told Mr. Cohen I was planning to go to New York and I would go in and see Mr. Zimmerman of their legal department.

As I said before, I told him about the location and the fine appointments that we were planning for the theatre.

And I also told him the reason that we wanted first run RKO pictures, negotiated, was the fact that the Loyola Theatre also played RKO pictures first run at one time or another and that they had established the area as a first run, separate community, separate theatre, and I saw no reason why we shouldn't get first run; the Fox theatre gets first run RKO pictures, why can't we get first run RKO pictures? [1450]

Of course, he said, well, they get very few pictures, they only got a Tim Holt, westerns is all they ever served him, but they are not serving him now.

I remember distinctly talking about that, when he said they are not serving now, I said, "Well, you did serve them. Why can't you serve us now?"

He said, well, it is strictly out of his hands, it is

(Testimony of Alex Schreiber.)

in the legal department in New York, they handle the sale of pictures, and he was just following New York's orders.

We talked about some mutual friends that we had known.

Q. Mr. Schreiber, did the Paradise ever receive any first run pictures from RKO from August 23, 1950, to September 1951? A. Not a picture.

Q. In evidence now are exhibits pertaining to your original letters to United Artists, Exhibits 30-A and 30-B and -C, as well as 30-D.

Then there is a letter here that ought to be read, two letters. One is Exhibit 30-E, a letter from O'Laughlin to Schreiber, March 9th. [1451]

* * * * *

Did you have a Los Angeles drive-in theatre, Mr. Schreiber? A. No, I did not.

Q. This was just an error? A. An error.

Q. An error in reference.

Then your letter of March 22, 1950, returned to Mr. O'Laughlin, reads as follows: [1452]

* * * * *

After this March 22nd, did you have a meeting with Mr. O'Laughlin? A. I did.

Q. About when did that meeting take place?

A. In March or April.

Q. 1950? A. 1950.

Q. Who was present?

A. I believe both Mr. O'Laughlin and Mr. Calihan.

Q. Calihan or Calloway?

(Testimony of Alex Schreiber.)

A. I don't know, Calloway or Calihan.

Q. All right.

A. I don't remember whether my son was with me or not.

Q. That took place at the United Artists Exchange on Film Row? A. That is correct.

Q. And what did you say and what did either of these gentlemen say?

A. Well, when I went in there, as I say, I don't remember whether my son was with me or not, he may have been with me, we introduced ourselves to them and we told them that we wanted to have first run pictures non-exclusive with the first run theatres—in Westchester. We wanted to negotiate and we wanted the opportunity to negotiate for the pictures. [1453]

Mr. O'Laughlin, I believe, is the one that did the talking. He said we couldn't have the first run pictures, because, I believe, at that time they were playing their pictures in what they called the Music Hall group of theatres, that those theatres were running the pictures and we just couldn't get in with that group.

But we could have pictures on the 7 day, but no bidding. He didn't say we had to bid. He is the first man that said there would be no bidding. I remember that distinctly, which was different than the other distributors.

And he looked up the releases and he asked me when we planned to open the theatre, and I believe the date I gave him was approximate, and he looked

(Testimony of Alex Schreiber.)

up his release chart, when they release their pictures, and he told me then that he hoped we could be open in time so we could play his picture Champagne For Caesar, that he heard the reports from the studio, et cetera, and that it was going to be a very big picture and he would either like to see us open with that particular picture or play that particular picture.

Q. Subsequently, Mr. Schreiber, did you receive from United Artists during the period August 23, 1950, to September 1951 any first run pictures?

A. I did not.

Q. After this time, after this statement to you about playing the 7 days, no bidding, on United Artists pictures, [1454] did United Artists during the fall of 1950 deliver pictures 7 days without bidding?

A. You mean when we opened up?

Q. Yes. A. No, they did not.

Q. Finally, Mr. Schreiber, did you have a visit with representatives of Twentieth Century-Fox in the Los Angeles office with respect to the Paradise?

A. I did.

Q. Approximately when?

A. In about March or April.

Q. 1950? A. 1950.

Q. Who was that visit with?

A. If my son was with me, and I don't believe he was on that first meeting, I went to the Fox exchange to meet Mr. Clyde Eckhardt, who was branch manager and whom I had met either in Chicago or Detroit. I believe at one time Clyde Eck-

(Testimony of Alex Schreiber.)

hardt was division man or district man. He had a higher position than he had in the local office. That is where I met him originally. I went in there to get acquainted again or to renew our acquaintance.

Buck Stoner, who formerly used to be with Metro-Goldwyn-Mayer, who left Metro and went over to Fox, he came in and got to talking. [1455]

Of course, they said, "If you want any Fox pictures, you know our pictures are sold to the Loyola. We have no pictures for you."

I said, "I know that. I know the pictures are sold at the Loyola and you are selling your pictures to Fox, but I did not come in to ask you for Fox pictures. I wanted to get acquainted with you again, renew my acquaintance."

But that I saw no reason why I couldn't have some pictures, and if they thought that they had a big picture at any time that would warrant playing two theatres day and date, I would be glad to consider playing the Paradise day and date with their Loyola together if it was that big a picture, and I would be glad to consider it if they would give me an opportunity to play the picture.

We didn't stay there very long, because I remember Buck Stoner had an appointment and he wanted to take up some matters with Clyde Eckhardt, and I believe he said that—I have a memorandum on that—that he had a 5:30 appointment and it was already 5:40, so he had to leave, and I left, and that was about the end.

I have a memorandum on that, I believe, Mr. Cor-

(Testimony of Alex Schreiber.)

inblit. Maybe there is something in there that will refresh my memory on something else that was discussed.

Q. I will show you Plaintiff's Exhibit 18-A and ask you if you had or if you prepared or caused to be prepared this [1456] memorandum on or about the date that it bears.

A. Yes. This bears the date April 13, 1950, at 5:05 p.m. to 5:40 p.m.

Q. I will ask you whether that refreshes your recollection as to the matters you have testified about.

A. Well, they said that they noticed the location and it looks like we are going to have a beautiful theatre, and they pass there quite often on their way to the airport.

I also told them that I sent letters to New York to all the distributors, but I didn't send them any letter, that I didn't send a letter to their New York office because I thought they were obligated to serve their pictures in the Loyola Theatre, and that I did not come in to ask them for their pictures for that reason. I don't know whether I said that before or not.

Mr. Eckhardt said to me, "I understand you are building some theatres in the Valley."

I confirmed it and said we planned two theatres there, and I showed him some pictures of the proposed theatres in the Valley.

He made a memorandum on his calendar pad as to the name of the theatres, the location and the

(Testimony of Alex Schreiber.)

approximate seating capacity of these two theatres that we had discussed we were going to build in the Valley.

They wished me a lot of luck and said that they remembered [1457] the area since it was a four-corner area and it is a rapid growing area, and they thought we would do very good business, and that was about the end of the meeting.

Q. All right, Mr. Schreiber. Did you during the period August 23, 1950, to September 1951 receive any Twentieth Century-Fox pictures first run?

A. Not a single picture. [1458]

* * * * *

Q. (By Mr. Corinblit): All right, Mr. Schreiber. You did subsequently send a letter to Twentieth Century-Fox and that letter is dated—it is marked Plaintiff's Exhibit 18-B. I will show you Plaintiff's Exhibit 18-B—pardon me. This letter was sent by Mr. Seymour Simon on your behalf. I will show you Plaintiff's Exhibit—let me withdraw that for a moment.

Mr. Corinblit: Counsel, we have Plaintiff's Exhibits 18-B and -C which were sent and received by Mr. Simon. I take it we may waive foundation as far as the letters are concerned. Twentieth Century-Fox, I am sorry.

Mr. Johnston: I will stipulate the letters were sent and received.

Mr. Corinblit: We will offer Plaintiff's Exhibits 18-B and 18-C in evidence.

The Court: They may be received in evidence.

(Testimony of Alex Schreiber.)

(The exhibits heretofore marked Plaintiff's Exhibits 18-B and 18-C, were received in evidence.) [1461]

* * * * *

Q. (By Mr. Corinblit): Now, Mr. Schreiber, calling your attention to the letter of April 17, 1950, which was a letter from Mr. Seymour Simon to Twentieth Century-Fox in New York, a duplicate [1463] of that letter was sent to all of the other distributors, the major distributors, isn't that correct? A. I believe that is correct.

Q. Well, without bothering to read them, we will offer in evidence these letters and the exhibit numbers are as follows:

Plaintiff's Exhibit 1-F, a letter addressed to Paramount.

Plaintiff's Exhibit 6-H, a letter addressed to Loew's.

Plaintiff's Exhibit 10-F-2, a letter addressed to Warners.

Plaintiff's Exhibit 14-E, which is already in evidence. That is the Universal letter.

Plaintiff's Exhibit 21-F, a letter addressed to RKO.

Plaintiff's Exhibit 26-F, a letter addressed to Columbia.

And Plaintiff's Exhibit 30-G, a letter addressed to United Artists.

We will offer these letters in evidence, your Honor.

The Court: They will be received in evidence.

(Testimony of Alex Schreiber.)

(The exhibit heretofore marked Plaintiff's Exhibits 1-F, 6-H, 10-F-2, 21-F, 26-F and 30-G, were received in evidence.)

Q. (By Mr. Corinblit): Now, Mr. Schreiber, when you were——

The Court: Let us wait until the clerk marks them. [1464]

The Clerk: The reporter has them, your Honor.

The Court: Do you have the exhibits offered, Mr. Reporter?

The Reporter: Yes, your Honor.

Q. (By Mr. Corinblit): After these letters of April 17, 1950, by Mr. Simon to the various distributors in New York, did you make a visit to New York to discuss the matter of the Paradise Theatre with the responsible officials of the distributors in New York? A. Yes, I did.

Q. And did you meet Mr. Simon there?

A. Yes.

Q. And Mr. Simon was your attorney, is that correct? A. He was.

Q. And did you go with him to some of the exchanges—some of the New York offices of the distributors? A. I did.

Q. Now, when did your meetings in New York take place—that is what time period?

A. Around the 25th or 26th of April, 1950.

Q. Did you visit with anyone at the defendant Universal? A. Yes, we did.

Q. And where did that visit take place?

A. In the attorney's office.

(Testimony of Alex Schreiber.)

Q. Do you remember what his name was? [1465]

A. I think Mr. Landau. I usually get Mr. Landau and Mr. Levinson mixed up.

Q. Mr. Landau and Mr. Simon were present and you were present, is that right?

A. That is right.

Q. Now, Mr. Simon—we have already read to the jury the testimony of Mr. Simon concerning his recollection of what he said and what Mr. Landau said.

Would you tell us what you remember your having said to Mr. Landau, what statements you made and what Mr. Landau said with respect to Universal?

A. Well, can I start out by saying that Mr. Simon did most of the talking.

Q. All right. He was an attorney.

A. Yes. He did most of the talking and explained the reason why he thought we were entitled to the first run Universal pictures; that they were running their pictures in this five-unit theatre combination and he saw no reason why the Paradise shouldn't have an opportunity to run first run pictures, too, because they had their pictures playing in five locations all over the greater Los Angeles area.

I added to that by showing pictures of the area of Westchester. I believe I told him about the number of homes—that I was given the number and the number of people by Mr. Hayden Worthington of the Ayers people. [1466]

(Testimony of Alex Schreiber.)

I believe I showed him the pictures of the proposed theatre and told him about when we were going to open; that I thought that if they could serve their pictures to the Fox Theatre, the Loyola one time or another that, why don't they serve us the pictures first run.

We have got as big a theatre and we expected to have as nice a theatre. We have all the facilities. We have parking, and I believe they—I believe I told them all about the fine things we planned to put in the theatre.

I made a request for first run Los Angeles non-exclusive first run pictures except with clearance over the Loyola Theatre, and both Mr. Simon and I told him we didn't care who else played the pictures with us day and date,—that the Westchester was an area by itself and they had over 30,000 people at that time. That was the figures that were given to me by Mr. Hayden Worthington of the Ayers' office.

I told him about the development in the area, all about the factories, all about the people that lived around there, and that I thought we should have the opportunity, at least, to play their pictures first run.

Q. All right. Do you recall that we had Mr. Simon's testimony about what was said. As far as he and Mr. Landau were concerned, you have nothing to add to that, is that correct?

A. That is about right. Mr. Simon told him the same [1467] thing that practically—rather, I told

(Testimony of Alex Schreiber.)

him practically the same thing Simon did and I added a few other things that Mr. Simon may have forgot.

Q. We have already read to the jury, and I will not trouble them again with the letters from Exhibits 14-F and 14-G, 14-H and 14-I, which are all in evidence and in which Universal stated their position with respect to first run and with respect to 7 days.

The net result so far as their statement to you of 7 days was what?

Mr. Mitchell: That calls for a conclusion as to what the net result was. I don't mind him saying what was said.

The Court: Objection sustained.

Mr. Corinblit: All right. I thought I would save time by asking that question.

The Witness: I forgot to add that Mr.—

Mr. Mitchell: There is no question pending.

The Court: Just a minute.

Q. (By Mr. Corinblit): Mr. Schreiber, was there something else said there that you have not stated?

A. Yes. Mr. Landau said that they studied the area and they came to the conclusion that we were in substantial competition with Inglewood and we would have to bid against pictures there. They decided in order for us to get pictures we would have to bid on the 7-day availability against the [1468] Inglewood theatres.

Also Mr. Simon, I think, mentioned something to

(Testimony of Alex Schreiber.)

them about the Chicago situation where they got more runs and why don't they—why don't they put in pictures for experiment and see whether they interfere with the first run houses, and let us run some pictures—that is the least they could do, is try it and see whether we hurt the other theatres, and to see what the film rental they would get out of the Paradise by playing first run.

Q. Now, on that New York visit you and Mr. Simon also visited with representatives of Loew's Incorporated, isn't that right?

A. That is right.

Q. And do you remember approximately when that conversation took place?

A. That same day or the day before or the day after. We were there about two or three days.

Q. That was about April 25th, you say, 1950?

A. That is right.

Q. And the people that you talked to so far as Loew's was concerned, were whom?

A. Mr. Eisenberg and Mr. Ben—I think his first name is Ben Melniker of the legal department of Metro-Goldwyn-Mayer.

Q. Now, Mr. Simon testified to the conversations that [1469] took place there and I don't think we have to go into them again.

Will you tell me what you remember you said and what the gentlemen there said?

A. Well, Mr. Simon and Mr. Melniker and Mr. Eisenberg were doing all of the talking in the beginning, and Mr. Simon was pointing out about the

(Testimony of Alex Schreiber.)

experience that Metro had in Chicago, where Mr. Simon represented quite a few theatres, and they were trying to compare Los Angeles to Chicago as far as film rentals were concerned, because it was pointed out to Metro the advantage that they got out of the change from running in Chicago and he thought the same thing might apply in Los Angeles by the multiple first runs, et cetera, and then I, after listening, I showed some pictures of the Paradise and explained to them the area and the fine appointments that I expected to put in the Paradise and I also told them the same thing, that the Loyola Theatre, a Fox theatre, had run Metro pictures first run Los Angeles on a multiple first run and why couldn't the Paradise have some Metro pictures.

I believe they told me that they—they said they were only small pictures and they don't serve them any more. I said, "Well, then, serve us some small pictures. We would like to have some small first run pictures. Anything. We would like to have first run and the same privilege you afforded [1470] the Fox Loyola Theatre and that appeared to be the conversation that I had with them at that time.

Q. All right. Now, at the——

A. May I add again, which I forgot, like I did the other?

Q. All right.

A. They said they studied the area, made a survey. Mr. Isenberg was a lawyer. He drove around, I believe he said, with Mr. Gardner, and they looked

(Testimony of Alex Schreiber.)

over all the area, and they decided that we were in competition with Inglewood and we would have to bid against Inglewood.

And that they had one 7 day availability there, and if we wanted that 7 day, we would have to bid, and they would be glad to give us an opportunity to bid on the 7 day, but no first runs, because their first runs were played at the Loew's State downtown and the Grauman's Egyptian in Hollywood.

Q. All right. Now, you had a meeting also with Mr. Simon at the Paramount exchange, isn't that right?

A. That's right.

Q. The Paramount office in New York?

A. That's right.

Q. Who was present at that meeting?

A. First I believe we met with Mr. Austin Keogh, and he called in later Mr. Lou Phillips. Both men were from the legal department.

And Mr. Simon told them why he thought we should have first run Los Angeles non-exclusive.

Mr. Keogh and Mr. Phillips or either one of them told Mr. Simon and I that they had a franchise with the two Paramount theatres and that with that franchise they would not serve us any first run pictures, they just wouldn't do it, until the courts decided what position they were in or how the lawsuit was going to wind up.

Mr. Simon, Mr. Seymour Simon or I told them that we understood that the franchise that they had was illegal, but Mr. Simon, as I said before, was doing most all of the talking.

(Testimony of Alex Schreiber.)

I showed the pictures that I had, the airplane pictures. I showed Mr. Lou Phillips and Mr. Keogh the map of the theatres that the members of the jury looked at the other day.

He wanted to see—he wanted to know if I would leave that copy with him.

And I told him that was the only one I had, that I would be glad to have some photostatic copies of it, and Mr. Phillips said, “Okay. We will have some copies made of it.”

So I said, “All right, here it is. Make them.”

I remember distinctly he said, “No, we won’t make the copies. You make the copies.”

I remember distinctly Mr. Simon said, “What is the technicality as to who is to make the copies?”

“They would rather have the copies made by you rather than by them.”

So he called in the secretary and the secretary sent [1473] out and had photographs made of all the theatre locations that I had with me at the time.

Then we talked about pictures and I told Mr. Phillips and Mr. Keogh, “Why can’t we have first run pictures? The Loyola, the Fox house, had Paramount first run pictures. They ran three or four Paramount pictures in the Loyola Theatre first run day and date with Hollywood and downtown, and why can’t we have them?”

Well, they said it was just a coincidence, they were blocked up with pictures, and they gave them those pictures rather than waiting for a late date

(Testimony of Alex Schreiber.)

from the two Paramount theatres, they released those pictures, and that was a long time ago.

I think I told them, called their attention to Captain China or China Captain, a picture that had just recently played the two Paramount theatres.

Well, that was just a coincidence and they don't know, but we couldn't have them, we just couldn't have them.

But they had decided that we could have 7 day bidding, that Mr. Taylor or Mr. Smith or they had decided in New York that they are going to put out two 7 day pictures and two 14 day pictures and we could bid against them, and if I saw Mr. Taylor and Mr. Smith in the Los Angeles office, they will give us the forms or they will give us an opportunity to bid on the pictures. [1474]

Now, I was asked to leave the room after we visited there about a half hour or 45 minutes, because Mr. Simon, I believe, asked me to leave the room because he had some other business with Mr. Phillips and Mr. Keogh that he wanted to discuss on some other theatres, and I left the room.

Q. Mr. Schreiber, I will ask you this question. While you were present in that room, between Mr. Simon and the other people there, was anything said by anyone about bidding between the La Tijera and the Paradise Theatre?

A. Yes. They may have said I had to bid against the La Tijera and Inglewood theatres. I believe they said, also, about that leap frog clearance.

Q. Now, while you were in New York, Mr.

(Testimony of Alex Schreiber.)

Schreiber, with respect to Paramount, we have already had Mr. Simon's testimony with respect to those matters there, and I don't think you have to go any further with it.

While you were in New York you visited at the Warners office with Mr. Simon, isn't that correct?

A. That is correct.

Q. Was that about the same time?

A. That was right a day before or the same day or the next day.

Q. Do you remember who was present? You, Mr. Simon, and who else?

A. Mr. Levinson, the attorney for Warner Bros.

Q. We have had what Mr. Simon states took place. Will you tell us what you said and as best you can recall what Mr. Levinson said to you?

A. After Mr. Simon got through talking to Mr. Levinson and asking for a first run availability, non-exclusive first run, with the three Warner theatres, which Mr. Levinson refused to give or permit, and, of course, said that they studied the area, that he checked with Mr. Herbel and Mr. Greenberg, and they have decided that no first run, but we could have 7 day bidding against the La Tijera and the theatres in Inglewood.

I then showed him the airplane pictures I had, the map that I had of the location of the various theatres, pictures of the theatre, told him about the appointments, told him about the size, told him about the free parking, that we had everything that the Loyola had to offer, and why can't we get some

(Testimony of Alex Schreiber.)

Warner pictures like the Fox Loyola had? The Fox Loyola played Warners also.

And Mr. Levinson said, well, if they did play, it was a small picture, it was a secondary picture—just passed it off that it was nothing.

I said, “Why can’t we have that same small picture?” Just as he passed it off. “Why can’t we have the same opportunity as the Fox theatre had? We are just two or three blocks away.” [1476]

I tried to explain, did everything I could to impress these people that they had been serving the Fox Loyola Theatre at one time or another, although they kept saying it was a long time ago, long time ago, and they don’t do it anymore.

I said, “Well, give us one picture, give us two pictures, we want to get started. We have got a beautiful theatre, big investment, big obligation, payment for the equipment, I had a big mortgage payment, loaned a lot of money.

Whether I said that exactly to him or the other ones, but that was my story that I was trying to convey to these people in New York.

Q. Are you certain, Mr. Schreiber, with respect to the Warner’s matter, whether at that time you recall stating Warner pictures had played in the Loyola, or was this with regard to some other distributor? This was in 1950.

A. I am pretty sure I told him that they had played pictures there. If I had my records with me of the pictures, I called it to their attention. If they

(Testimony of Alex Schreiber.)

didn't play there, then I told them that the other distributors did, most all, and why can Fox get other pictures besides Fox, and I can't get them? But I am almost positive that they had played at that time as of April 1950. I feel that they had played one picture or two pictures. [1477]

Q. You also made——

The Court: Mr. Corinblit, before you get into another office, we will take our recess.

Mr. Corinblit: Thank you, your Honor.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case among yourselves, you are not to allow anyone to discuss it with you, you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition, we will now recess until 15 minutes after 3:00.

(Recess.)

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated.

The Court: You may proceed.

Q. (By Mr. Corinblit): Mr. Schreiber, in order to move along here, Mr. Simon already testified you had meetings at RKO, Columbia—I don't believe he testified any meetings were held with United Artists or with Twentieth Century-Fox.

With regard to RKO and Columbia, is your rec-

(Testimony of Alex Schreiber.)

ollection of what was said in accord with what Mr. Simon testified to as read in his deposition?

A. That's right. [1478]

Q. All right. Now, to turn for a minute to the testimony you gave with respect to Universal, on the matter of 7 day availability, the evidence shows that as of an early date you were told you would be required, as early as April or May, you would be required to bid for 7 day availability against all the theatres in Inglewood.

When you got that information, when that information was passed on to you by a representative of Universal, were you informed that Universal, instead of bidding, had been negotiating with either Fox or the La Tijera Theatre for 7 day availability?

Mr. Mitchell: Your Honor, I object to that on the ground there is no foundation laid to show who informed him, and if some person informed him, it is hearsay.

The Court: This is preliminary. He can answer that yes or no. If he answers yes, then he can lay a foundation.

Mr. Corinblit: All right.

Q. Were you informed Universal had been negotiating with Fox or with the La Tijera for the 7 day availability pictures in the Inglewood-Westchester area from about September to at least March?

Mr. Mitchell: I object to that, also, on the ground it is leading, your Honor. You see, for him to

(Testimony of Alex Schreiber.)

answer that question yes, when he asks if he was informed, then he [1479] doesn't need to go any further, if he wants to stop there. The evidence is in. So it is really not a proper question in its present form.

The Court: Change your question and don't make it a leading question.

Q. (By Mr. Corinblit): Mr. Schreiber, what were you informed, if anything?

Mr. Mitchell: Well, now, I object to that on the same grounds.

The Court: May I ask a question? Did you have any conversations with anybody relative to this particular problem?

The Witness: Yes. They told me——

Mr. Mitchell: Wait a minute.

The Court: No. The answer is yes?

The Witness: Yes.

The Court: Now lay your foundation of where the conversation took place, who was there, and what was said.

Q. (By Mr. Corinblit): Before we do that, I will show you Plaintiff's Exhibit 14-F, Mr. Schreiber, which is a letter in evidence from Mr. Landau to Mr. Simon, Mr. Seymour Simon, and ask you to examine that.

A. Yes, I remember that. [1480]

Q. All right. Now, I want to ask you whether prior to this letter on May 4th anyone from Universal had any conversation with you about nego-

(Testimony of Alex Schreiber.)

tiating with the Fox or Universal people about the 7-day availability. A. Yes.

Q. When was there such a conversation?

A. They told me that I have to bid——

Mr. Mitchell: Wait a minute.

The Court: The question was when.

The Witness: Before we opened the theatre and prior to opening the theatre and after we opened the theatre.

Q. (By Mr. Corinblit): Well, I am now referring to this letter, Exhibit 14-F which is dated May 4, 1950. You testified to a meeting with Mr. Marriott at approximately April 12, 1950, about 22 days, three weeks before that. I want to know what conversation you are referring to about this matter of negotiating with Fox and the La Tijera.

Mr. Mitchell: What conversation are you talking about? Can't we get when, where and who were present because you are now asking him for a conversation. Can't we get the foundation?

Mr. Corinblit: Yes.

Q. (By Mr. Corinblit): Was there such a conversation, Mr. Schreiber?

A. Yes. We talked about the 7-day—— [1481]

Q. Just tell me yes or no. A. Yes.

Q. When? A. In about April 1950.

Q. You are talking about the meeting with Mr. Marriott? A. That is right.

Q. Now, what was said there, if anything——

The Court: We were present?

Q. (By Mr. Corinblit): Who were present?

(Testimony of Alex Schreiber.)

A. Mr. Marriott, myself and my son.

Q. That is the——

A. April or March meeting, 1950.

Q. That is the conversation you already testified about? A. That is right.

Q. All right. Now, what was said, if anything, then about the matter of negotiating with the Fox or the La Tijera people?

A. They told me that the Fox and the La Tijera people were bidding for 7-day and if I wanted the pictures we would have to bid against the La Tijera and the theatres in Inglewood.

Q. So nothing was said at that meeting about negotiations? A. No. [1482]

Q. Now, referring to the statement, the conversation you testified that you had with Mr. Hickey at about the same time, in which you stated that Mr. Hickey stated the 7-day availability so far as Paradise was concerned you would have to bid?

A. That is right.

Q. At that conversation was anything said about Loew's negotiating—I will withdraw that.

Was anything said about the matter of negotiating for 7-day availability? A. No.

Q. When you were discussing the matter with Mr. Herbel at about March 30, 1950, when you testified Mr. Herbel said you would—well, I will withdraw that.

Did Mr. Herbel at that time say anything to you about the matter of negotiating the 7-day availability?

(Testimony of Alex Schreiber.)

Mr. Mitchell: I object.

The Witness: No.

Mr. Mitchell: I object to it on the ground it has already been asked and answered and these are argumentative questions.

The Court: It seems to me we are going back over testimony that has already been introduced.

This case is going to take long enough without repeating the testimony. [1483]

Mr. Corinblit: Yes.

The Court: I know it is important before the jury to repeat the questions and answers as many times as possible——

Mr. Corinblit: There is no intent to repeat the question, your Honor. The statement was made to Mr. Schreiber that he would have to bid. I just want it clear that no statement was made that he could negotiate for the pictures on the 7-day availability in the light of the testimony with reference to negotiations right up to the very time that the Paradise went in there and asked for 7-day pictures.

The Court: I will give you plenty of time to argue the case to the jury when the time comes.

Mr. Mitchell: If I recall correctly the witness corrected his testimony about Warner's and said nothing was said about 7 days at this meeting and he is now trying to change it back again. I think it is argumentative and——

The Court: I sustained the objection.

Mr. Corinblit: Very well.

(Testimony of Alex Schreiber.)

The Court: I would like to ask this witness a question.

During this period, 1949 and 1951, did you consider the Paradise Theatre in substantial competition with any theatre?

The Witness: Yes, sir.

The Court: What theatre?

The Witness: Loyola Theatre only.

The Court: It was your opinion there was no substantial [1484] competition between the Paradise Theatre and the other theatres that have been mentioned in this case?

The Witness: That is correct.

The Court: Now, I take it from what you said in regard to the conversations you had with representatives of the other motion picture distributors, that they all took the position that the Paradise Theatre was in substantial competition with the theatres in Inglewood?

A. That is what they all ganged up on me and said.

The Court: I didn't ask you if they all ganged up on you. That may go out as a conclusion. But I take it they all told you in their opinion that there was substantial competition between the Paradise Theatre and the theatres in Inglewood?

The Witness: That is right with the exception of one exchange in the beginning. The United Artists said we could have—Mr. O'Laughlin said we could have 7 days by negotiation the first time I met him,

(Testimony of Alex Schreiber.)

but then for a full year they never let us negotiate for 7 days.

The Court: All right. Now, you say it is your opinion that the Paradise Theatre was not in substantial competition with the theatres in Inglewood?

The Witness: That is correct.

The Court: Now, will you define for the jury what you mean by "substantial competition"?

The Witness: I will be glad to give you my interpretation of substantial competition.

The Court: That is all we want.

The Witness: Substantial competition is where there are two theatres that expect or make an effort to draw their patronage from the same area by playing the pictures day and date.

The two theatres, in permitting the second theatre that may be a new theatre, that just came into the area, or an older theatre that had been there and decided to move up their availability or requested to move up their availability to the same availability of the first theatre, then by the distributors selling them that picture or those pictures day and date with the first theatre there in that area and they are both going to draw from the same area, if by doing that this theatre affects the gross receipts of the first theatre that had the 7-day or the first run or whatever availability it is, even if it is a 21-day house or 14-day house, if it affects it to the extent of at least or a minimum of 25 to 30 per cent cut in their receipts that I would consider substantial competition.

(Testimony of Alex Schreiber.)

The Court: All right. Now what surveys did you make to determine whether or not there was substantial competition or there was not substantial competition between the Paradise Theatre and the theatres in Inglewood. Did you make any [1486] surveys?

A. We made some surveys and then again I used my 32 years of experience in the theatre business to form my opinion.

The Court: Then it was just speculation or a guess or a conjecture?

The Witness: No, it was 30 some-odd years of experience in the business of running all types of theatres, all types of neighborhoods, in seeing the houses, the amount of houses in our area by going up and down the side streets and around to the schools, the business section, checking the population with the Ayers people in the beginning and there were over 30,000 people. There was enough to assure a second theatre in the Westchester area a very handsome profit if they could run day and date with these other theatres. [1487]

The Court: Well, can you tell me how many people from the Westchester area would go into Inglewood to see the pictures in the theatres in Inglewood?

The Witness: Your Honor, I never counted them. There was no way of checking. But I would say very few people would leave the area of Westchester, leave a theatre like the Loyola Theatre or a theatre like the Paradise, to go into Inglewood to

(Testimony of Alex Schreiber.)

see a picture if the picture was playing in the Loyola or the Paradise theatre.

The Court: Then do you base your definition of substantial competition on distance, on mileage?

The Witness: On population in the area that you draw from, the number of people, the number of children, the amount of businesses in that area—not a factory area, because nobody lives in a factory area. That is just factories. But where there are residential sections, where there are thousands of homes as there were in the Westchester area, those are the people from that area that would come to the Loyola and would come to the Paradise Theatre, if both theatres ran the pictures from all the distributors.

There was no sense in making the people of Westchester go to Inglewood or Hollywood or Culver City or Santa Monica or Redondo Beach or Manhattan Beach. We had parking facilities——

The Court: Now, just a minute. I asked you a [1488] question. I didn't want you to make a speech.

The Witness: I'm sorry.

The Court: Let's repeat the question. Does distance have anything to do with this question of substantial competition?

The Witness: Not all the time.

The Court: All right. Did you make any survey to see how many people would come from Inglewood down to the Paradise Theatre?

The Witness: No, because there would be no need for the people in Inglewood to come to West-

(Testimony of Alex Schreiber.)

chester, because they had four or five theatres there. They had their parking there. They were playing all the pictures.

However, if the Loyola and the Paradise played first run pictures, all the pictures, there may be a few people each night that may come from Inglewood into Westchester if they wanted to see a picture earlier, but that would be very few.

The Court: You have no surveys and you have nothing definite to indicate how many people would leave Westchester to go to Inglewood or would leave Inglewood to go to Westchester?

The Witness: I would say very few, but I have made no survey of how many or counted how many people, but it would be very few that would go from one area to the other.

The Court: You have no better criterion to determine [1489] what was substantial competition than the distributors have?

The Witness: Except, your Honor, if you want to put it that way, we had a theatre there that was going to cost over \$450,000, and we couldn't afford to guess. We had to be pretty sure of what we wanted in order to protect that investment.

The Court: The distributors say that the theatres in Westchester were in substantial competition with Inglewood.

The Witness: They all——

The Court: You say they were not.

The Witness: Yes.

(Testimony of Alex Schreiber.)

The Court: I am trying to find out from both of you on what do you base that conclusion.

The Witness: I believe one of the facts is that Fox West Coast Theatres insisted on it, and with their buying power, there was no question in my mind or anybody in the theatre business that Fox West Coast didn't put the pressure on these distributors——

The Court: Well, again I am not asking you to make a speech.

Mr. Johnston: Your Honor, I move to strike the comment of the witness.

The Court: It may go out.

I was trying to find out what yardstick you were using. As I told the jury, I think every one of you fellows have a different yardstick. [1490]

The Witness: I heard you say that.

The Court: As to what you mean by substantial competition.

The Witness: I heard you say that, and when you see, when we have a picture of all the houses, all the people living in Westchester, there is enough people in business in Westchester to support the Loyola Theatre and make it profitable, and to support the Paradise and make it a profitable theatre.

The Court: Well, that's enough.

Mr. Corinblit, I haven't got any further with this witness than I did with the others.

Mr. Corinblit: Your Honor, we may have some more testimony on this point.

I would like to have marked as Plaintiff's Exhibit

(Testimony of Alex Schreiber.)

for identification a photograph of the Westchester area.

Mr. Westbrook: A portion of the Westchester area?

Mr. Corinblit: A portion of the Westchester area.

The Court: It may be marked for identification only, unless there is no dispute.

Mr. Mitchell: There will be no dispute when we find out what it is, when it was taken, and so on. We are not going to quibble about it.

The Court: It may be marked for identification.

The Clerk: 55 for identification. [1491]

(The exhibit referred to was marked as Plaintiff's Exhibit No. 55 for identification.)

Mr. Corinblit: Perhaps Mr. Schreiber can state the date the picture was taken.

The Witness: It is marked on the back of the photograph by the Spence Airview people that took the picture.

Mr. Corinblit: I don't know that we have it on the back of this.

The Witness: Yes, it is on there.

Mr. Corinblit: It is marked January 7, 1951.

Q. Mr. Schreiber, I think we can do it now, so will you step down from the witness stand and point out some of the matters in connection with this picture. Step over on the side and use the pointer.

A. (Witness leaving stand and going to blackboard.)

(Testimony of Alex Schreiber.)

Q. Would you point out to the jury the location of the Loyola Theatre?

A. The Loyola Theatre is on the corner, on the southeast corner of Sepulveda and Manchester right here.

Q. Now will you point out the location of the Paradise Theatre?

A. The Paradise Theatre is at the corner of Will Rogers and Sepulveda, the southeast corner also, a matter of one block or two blocks from the Loyola Theatre. That means one to there and one to there. It is two, but there is a small [1492] street running between the first block and the second block, running from the parking lot in the rear of this business property to the parking lot on the back of these business places. The Hampshire House Furniture Store is on the corner of this small street, so if you want, you can call it one, two, three blocks.

Q. All right.

A. There is the Paradise and there is the Loyola Theatre.

Q. Just run the pointer along Sepulveda.

A. Sepulveda runs this way, north and south, up through here, and goes up into Culver City.

Q. Then to the—I guess that would be the northeast? A. That is northwest.

Q. Point to the northeast. What is that blank space in there?

A. The cemetery and the golf club.

Q. Would you point out the street, La Tijera Boulevard there?

(Testimony of Alex Schreiber.)

A. La Tijera Boulevard is this long street here or boulevard. It runs from here all the way across and runs on this here out past the photograph.

Q. On the outside of the photograph would be the La Tijera Theatre, is that correct?

A. That is correct. [1493]

Q. Now, in which direction from this map would the Inglewood area be? It is off this picture.

A. That would be out over here.

Mr. Mitchell: You just cut it off at Inglewood, didn't you?

Mr. Corinblit: This is a photograph——

Mr. Mitchell: The photograph is just cut off at Inglewood, isn't that right?

Mr. Corinblit: It is cut off at this portion of Westchester. If you will wait 15 seconds, we will give you a photograph of both areas.

Q. Now, looking to the south, and I guess that is off the map, too, what kind of a business establishment is there, or what is there there that the jury ought to know about? The airport is south, is that right?

A. This is part of the new airport extension. Way down along here, and it goes east. The airport is down in here, right down here.

Q. That is to the south?

A. South and over east from Sepulveda, quite a distance down and over. I think this may be one of the factory buildings here that is near the airport.

Q. To the west of that area, what would we find?

A. All the way out here would be the ocean.

(Testimony of Alex Schreiber.)

Q. The Pacific Ocean? [1494]

A. That's right.

Q. Would you designate just briefly some of the businesses in the—will you point out to the jury, please, the parking facilities made available to the Paradise Theatre in Westchester?

A. This is the corner of the Paradise Theatre and the Paradise Bowling Alley. All this area in here is available for parking for the Paradise Theatre and Bowling Alley.

This is a community parking, and this the parking of the Loyola. In other words, the public can park from Manchester all the way down to East Sepulveda Way. They call this street here that goes up like that and around the East Sepulveda Way, which compares with this street here. It is the shape of a shield. They didn't continue this road down here. They made it look like a shield. All this property in here is community parking. If you want to park at the Hampshire House, they can use this, or if they want to park at the Paradise or park at the Loyola Theatre, or the Thrifty Drug Store, the Whelan Drug Store, the Security First National Bank, the gas station, the Foster Freeze, they have this privilege.

That was set up when the property was bought, that all property goes together with the property, you buy the front and the back. The same thing applies on the west side of Sepulveda. All this is public parking in back of the [1495] businesses.

(Testimony of Alex Schreiber.)

Q. Will you point out the location of the Broadway Department store there, please?

A. This is the Broadway Department Store, formerly also Milliron's.

Q. And some of the other businesses south of the Broadway Store that are on that side of the street; what are they?

A. This large sign here is the Westchester Food Palace. Then you have Gallenkamp's Shoe Store, then Western Auto Supply Store, and this is the Curry's Ice Cream.

That, I think, was a hardware store and a paint store in here, and this is a long block of small stores in here, and this is an auto wash back here.

Q. All right. There was some mention of the Loyola University in that area, Mr. Schreiber. Will you point that out?

A. Right here, and this is Hughes, the Hughes Aircraft over here.

Q. Now you can return to the stand.

(Witness resuming stand.)

Mr. Corinblit: We will offer Plaintiff's Exhibit 55 in evidence, your Honor.

The Court: In evidence.

The Clerk: Exhibit 55. [1496]

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 55.) [1497]

Mr. Corinblit: We have a smaller map and it may be we can get this map blown up before we get much further in the case.

(Testimony of Alex Schreiber.)

Mr. Mitchell: May I see it?

(Document handed to counsel.)

The Court: I suppose all of those little dots I see on the map are houses?

The Witness: You bet your life they are and they average three and a half to four people per house.

The Court: Anything you want to say, say it so the jury can hear you. And you shouldn't volunteer any information at all.

The Witness: All right, your Honor.

Q. (By Mr. Corinblit): Mr. Schreiber, first of all—I will ask the court to mark Plaintiff's exhibit next in order a photograph, an aerial view of the Westchester area taken in 1948.

The Clerk: 56 for identification.

(The exhibit referred to was marked Plaintiff's Exhibit 56, for identification.)

Mr. Corinblit: I think I have shown this to counsel.

It is an aerial view of Westchester taken in January, 1948, and I will offer it as Plaintiff's Exhibit 56 in evidence.

Mr. Mitchell: It is more than the Westchester area. [1498] Your description isn't quite accurate. And I think if you will hold it this way, in order to compare it with the other map, you will see what I am talking about.

You have to turn it sideways, Mr. Corinblit.

Mr. Corinblit: And Sepulveda is this street right here.

(Testimony of Alex Schreiber.)

Mr. Mitchell: This really encompasses, looking at it with the title to the left, the diagonal street is La Tijera and it shows a part at least of Inglewood. Really the Academy Theatre is right over here at the edge of the righthand side of the map.

And I guess it shows the Baldwin Hills or the southerly slope of the Baldwin Hills, anyway.

Mr. Corinblit: All right. Mr. Mitchell is correct. I was reading the description off here. It is broader certainly than the Westchester area.

Mr. Mitchell: It is Westchester and part of Inglewood and part of Los Angeles. Westchester is Los Angeles and so are other portions surrounding it.

Mr. Corinblit: With that amendment to the description, I will offer Plaintiff's Exhibit 56 in evidence.

The Court: It may be received.

(The exhibit heretofore marked Plaintiff's Exhibit No. 56, was received in evidence.)

Mr. Johnston: This is what date?

Mr. Corinblit: January 1948. [1499]

I will pass this to the jury in a moment, but we will see if we can't describe it so the jury when they see it can recognize it.

Q. In order to see the north-south line you have to hold the picture sideways, is that right, Mr. Schreiber? This is Sepulveda, this line here, is that correct?

A. Let me look at it this way first. Yes, this is Sepulveda this way or Sepulveda this way.

(Testimony of Alex Schreiber.)

Q. Sepulveda runs across—if you hold it straight up, Sepulveda runs across horizontally, horizontally across the map, is that right?

A. That is right.

Q. And to the northwest is a vacant—it appears to be a group of houses and then a vacant plot there. Do you know what that was or what it was in January 1948? A. Vacant land.

Q. And then over to the right which would be south—— A. That is right.

Mr. Mitchell: To the right would be east. Why don't you put a north on it and everybody that reads a map reads the north at the top that I ever heard of. Put a north at the top and that is the way it is drawn.

The Witness: You have to look at it sideways then.

Q. (By Mr. Corinblit): All right. We will put an arrow north, holding it in that direction and then it would [1500] be south down here and that is equivalent to the southern portion of the exhibit in evidence, is that correct? A. That is right.

Q. And then over to the right, on the right-hand side, beyond the group of—around the Westchester area are houses that are treated as part of Inglewood, is that right? Right here?

A. That is right.

Q. And then as Mr. Mitchell pointed out the street that runs—— A. Northeast.

Q. Northeast is La Tijera?

A. La Tijera Boulevard.

(Testimony of Alex Schreiber.)

Q. La Tijera Boulevard. And then up at the end of La Tijera Boulevard is something called the edge of Baldwin Hills, is that right?

A. No, I don't think so. That is a cemetery and vacant property up in that area—all that vacant property.

Q. All right. We will have this passed to the jury.

Mr. Mitchell: That isn't the Inglewood Cemetery.

The Witness: Hillside.

Mr. Mitchell: It is Hillside?

The Witness: Yes.

Mr. Corinblit: We will ask that the map be handed to the jury. [1501]

The Court: You may hand it to the jury.

Mr. Corinblit: May I have Exhibit 45-J.

Q. I will show you, Mr. Schreiber, Exhibit 45-J, which is designated as a schedule showing the chronological play-off at the Paradise Theatre, August 23, 1950, to September 18, 1951, and I will ask you if this, to the best of your knowledge, reflects a true and correct statement of the pictures played, distributor, availability, the gross and the rentals?

I might say that Mr. Westbrook has examined this and has indicated that he finds some discrepancies with respect to gross receipts, which we will re-check, but subject to that, to the best of your knowledge, that is a correct play-off in the Paradise Theatre?

A. It is.

Q. Subject to the corrections and the double-

(Testimony of Alex Schreiber.)

checking we will offer Plaintiff's Exhibit 45-J in evidence.

The Court: In evidence.

(The exhibit heretofore marked Plaintiff's Exhibit 45-J, was received in evidence.)

Q. (By Mr. Corinblit): Perhaps we should have this exhibit explained.

Under the column "Date," are indicated dates. What do those dates mean, Mr. Schreiber?

A. Those are the dates that we played these particular [1502] pictures at the Paradise Theatre.

Q. Under the column "Name of Picture"?

A. Is the name of the picture that was played on those dates.

Q. And the name of the distributor?

A. Is the film distributor or the company that distributes that particular picture and they are the only ones that can distribute those pictures.

Q. And under the designation "Availability"?

A. The 7-day, the 21-day and 14-day indicated are the days on which we had the opportunity to play the picture or was licensed to play the picture.

Q. In other words, if under this column it says "7-days," that means that the picture was made available to you on the 7-day availability, is that right?

A. After the last play date of the first run theatre.

Q. In other words, the picture was licensed to a first run theatre in Los Angeles, it ended its exhibition in the first run theatre, and then it became

(Testimony of Alex Schreiber.)

available to the Paradise Theatre for the first time on the availability indicated under the column "Availability"?

A. If it was a 7-day there was a 7-day lapse of time in between and that is what they call clearance, between the first run and the 7-day house, so that during the playing of the picture no theatre can have on their screen the [1503] prevue trailers that are shown in all theatres of their coming attractions, the next coming attraction.

They allow that 7-day clearance or a 14-day or a 21-day clearance so that that theatre that plays the picture will not be advertising the picture while the first run theatre is playing it, so that they shouldn't tell their patrons, literally speaking, "Don't go to the other theatre because we have it coming on Wednesday or Thursday," or whatever date. So, they have that 7-day clearance or 14-day to not permit you to advertise it in your theatre while the first run theatre is playing it.

Q. Now, the 7-day period—if the availability here says 14 days, it means that the picture was not available until 14 days after the first run closing?

A. Correct.

Q. And if the designation is 21 days it means the picture was not available to the Paradise Theatre until 21 days after the first run theatre had closed the picture, is that correct?

A. That is right. But in the meanwhile, Mr. Corinblit, if there was 21 days, there would be other

(Testimony of Alex Schreiber.)

theatres that would play on the 7-day and 14-day ahead of the Paradise Theatre.

Q. I appreciate that. In other words, if there was an availability here of 21 days, it may be there were theatres [1504] in Inglewood, for example, that played the picture on the 7-day or 14-day?

A. Not only Inglewood, but all over greater Los Angeles.

Q. Now, under the column "Gross Receipts," what does the entry opposite, under that column refer to?

A. That is the net receipts that we were able to deposit to our account after the Federal taxes were deducted from the gross receipts.

Q. After the admission tax?

A. Admission tax, which is a Federal tax.

Q. Yes. And under the column "Rentals," what do the entries under that column mean?

A. Those are the film rentals we paid for that particular picture either through negotiation or offers or what they call bidding.

Q. Calling your attention, Mr. Schreiber, to the distributor Loew's and just examining the period from August 23 to the end of December, 1950, did the Paradise obtain any Loew's pictures on the 7-day availability—just on this first sheet, the first three months?

A. To what date, Mr. Corinblit?

Q. August 23 to the end of December.

A. End of December?

Q. Yes. [1505]

(Testimony of Alex Schreiber.)

A. Loew's first run, did you say?

Q. Yes, 7 days. Just to the end of December.

A. Yes, to the end of December, we played 2, 3, 4 and 1 is 5 pictures.

Q. Did you play any of those pictures on a 7-day availability? A. 7-day?

Q. Yes.

A. The first one on November 8 is not indicated.

Q. Other than the one not indicated?

A. The four other pictures are not indicated, what days we played on.

Q. There is no indication in the column?

A. No, there is not.

Q. All right. We will supply that.

Now, with respect to the distributor Twentieth Century-Fox during that period, did you play any picture on a 7-day availability?

A. We played no Fox pictures on a 7-day availability.

Q. With respect to the distributor United Artists did you play any picture on a 7-day availability? A. United Artists you say?

Mr. Mitchell: This is up to the end of December?

Mr. Corinblit: Yes.

Mr. Mitchell: 1950? [1506]

Mr. Corinblit: Yes.

The Witness: There is not a single picture played from United Artists on the 7-day availability.

Q. (By Mr. Corinblit): With respect to the

(Testimony of Alex Schreiber.)

distributor RKO, did you play any pictures of RKO on a 7-day availability?

A. There were no 7-day RKO pictures played.

Q. With respect to the distributor Columbia, did you play any pictures on a 7-day availability?

A. We played one 7-day Columbia picture, 7-day availability and there is an indication here which is marked "7 days for two pictures" that was re-issued, called *Gilda* and *Platinum Blonde*. They must have been about three or four years old. They were re-issued, the pictures were brought back into circulation. [1507]

Q. All right. With respect to the distributor Paramount, did you play any pictures on a 7 day availability?

A. One picture.

Q. With respect to the distributor Warners, you did play how many Warner pictures on a 7 day availability?

A. Three pictures.

Q. With respect to the distributor Universal, how many pictures, if any, did you play on 7 day availability?

A. One picture.

Mr. Mitchell: This is just up to 1950, the end of 1950?

Mr. Corinblit: That is correct. [1508]

* * * * *

Q. (By Mr. Corinblit): Mr. Schreiber, at the conclusion of yesterday's session, the court asked you a question with respect to the relationship of distances to the matter of substantial competition, and you gave an answer that indicated sometimes there was relationship and sometimes there wasn't.

(Testimony of Alex Schreiber.)

Would you state what relationship in your opinion [1512] substantial competition in this Inglewood-Westchester area had to distances? What was the situation?

A. Well, the way the pictures were booked, they necessarily weren't booked according to distances. They all vary. That is what I had in mind yesterday when the court asked me, does mileage take a consideration? I had in mind the question was does five miles, two miles, one mile or 20 miles, is that a pattern? When I said no, not necessarily, by that I was thinking about the different theatres and different mileage, and 1.8 miles apart they played day and date and theatres as far as five miles apart were playing day and date.

Q. All right.

A. They all vary. That is what I had in mind. There was no set pattern as to mileage.

Q. Mr. Schreiber, under your direction and control did you have a mileage run off on some of the theatres in the Inglewood-Westchester area?

A. I did.

Q. First we will start with respect to some of the theatres here. The distance from the Academy, I think this is the stipulated figure, the Academy to the Southside, the stipulated figure, I think, is 3.5 miles.

Mr. Mitchell: Don't we have a stipulation on all that? Why should we have evidence now and get a complete conflict with our stipulation, because maybe he will give [1513] something else?

(Testimony of Alex Schreiber.)

Mr. Corinblit: Mr. Mitchell, if you will consult with Mr. Westbrook, you will find that there is a stipulation suggested and I am perfectly ready and happy and am now ready to stipulate some of the figures, although on some of them there is a difference of opinion between us, so on those there will have to be evidence.

The Court: As far as I know, there has been no stipulation. I have been trying to find out what the mileage was and I can't find that there is a stipulation.

Mr. Westbrook: Your Honor, I can't point to the page in the record where the stipulation is, but I am sure there is a stipulation that that mileage is 3.6 miles.

The Court: That's right, but Mr. Mitchell said that there was a stipulation on all of these theatres.

Mr. Mitchell: I think we have agreed on the mileage on most of them.

The Court: All right.

Mr. Westbrook: There are only two or three of them that are in dispute.

Mr. Corinblit: I tell you what we can do. As we come to the mileages, if you will read them off from your record, if we can stipulate to them, we will do it here and now, or if we can't, we will have the testimony.

Q. Now, with respect to the distance between the [1514] Academy and the Paradise, we have that as 4.5 miles, is that correct?

Mr. Westbrook: That is correct.

(Testimony of Alex Schreiber.)

Mr. Corinblit: All right. I will stop here.

Q. Referring to the distributor Universal, Mr. Schreiber, did you observe during the period that you operated the theatre from August, 1950 to September, 1951, that the distributor Universal when it licensed the Academy a 7 day run also licensed the Southside day and date a 7 day run?

Mr. Mitchell: Well, now, that is a leading question. I object on that ground. It is not in accordance with the evidence. It is true sometimes Universal licensed the Academy day and date, and sometimes it didn't, so by asking that leading question, the witness will follow along with him and he will get an answer "Yes," and then we will have something completely in conflict with the record facts.

Mr. Corinblit: Your Honor, on this point there is no reason for this objection. Mr. Mitchell put in an exhibit, Universal G-1, which states that this fact is true. There is just no reason for his objection upon it because the matter is in the record, put in there by Mr. Mitchell.

Mr. Mitchell: My recollection is that sometimes they played day and date and sometimes they didn't.

Mr. Corinblit: That's all the question is.

Mr. Mitchell: Read the question. It isn't that. It is an all-inclusive question. That is what I am objecting to.

The Court: Read the question.

(Question read.)

The Court: Objection sustained. [1516]

(Testimony of Alex Schreiber.)

Q. (By Mr. Corinblit): Did you observe that that occurred at the time during that period?

A. Yes.

Q. Now, what did you observe, if anything, during the period with respect to the distributor Warner Bros. when they licensed the Academy on a 7-day availability?

Mr. Mitchell: Now, I think we ought to have the thing more definite. I mean these general things—we have the record here.

The Court: You do have the record here and the records are certainly better than the observations of this witness.

In addition to that it is purely argumentative and, as I said before, I will give you plenty of time to argue this case to the jury.

When the time comes you may marshall your records and argue it out to the jury.

Mr. Corinblit: This is just a very simple point. I have in mind the question that you asked Mr. Schreiber yesterday. That is the purpose of the question.

Now, I don't think there should be argument about it. It is true we have bulky records that we can put in, the cut-off cards and so forth, which will show the occasions that Warner played the Academy 7 days with the Southside day and date.

Perhaps we can stipulate to that. If we can get a [1517] stipulation that that occurred on occasions that is all I want for this purpose.

Would you stipulate, Mr. Mitchell, the Academy

(Testimony of Alex Schreiber.)

played a picture on 7-day availability and that same picture was played day and date at the Southside? Did that happen?

Mr. Mitchell: Let me check. I can't remember these facts. I will have to check them.

Correct. On occasions the Warner Bros. pictures played day and date at the Academy and the Southside.

But, your Honor, in order that the picture may not be slanted, I think that it should also be stipulated, and I assume that you know this, that Warner also played pictures on occasions day and date between the United Artists and the Southside; the United Artists, the La Tijera and the Imperial and the Southside.

The La Tijera and the Southside.

La Tijera and the Fifth Avenue.

The Paradise and the Imperial.

The Paradise and the Rio and the Paradise and the Southside and the La Tijera and the Imperial.

Mr. Corinblit: Yes, I will stipulate to that fact.

Q. (By Mr. Corinblit): Now, Mr. Schreiber, while we have these stipulations on the record we would like to put the distances on here now and to the extent you can stipulate to them we can do that. [1518]

Now, what distance, counsel, do you state to be the distance between the Southside and the United Artists Theatre?

Mr. Westbrook: According to my figures, approximately 5.3 miles.

(Testimony of Alex Schreiber.)

Q. (By Mr. Corinblit): Will you examine the check list you caused to be prepared, Mr. Schreiber?

Mr. Mitchell: I don't want the testimony of this witness. I don't think we should have the testimony of Mr. Schreiber. He didn't do the driving and if we are going to have a disagreement—if it is a driving test and if we are going to have a disagreement on it we should have the man here who did the driving and not Mr. Schreiber. It is just hearsay.

The Court: If they used an automobile speedometer we all know that automobile speedometers are not accurate—they are approximate only.

Mr. Mitchell: I don't believe he did it himself. My point is he asked if it was done under his direction.

The Court: The only question is, does he agree with this 5.3 figure. He said yes and the argument is over with.

Mr. Mitchell: Right.

Mr. Corinblit: May we have that distance again, please—United Artists Theatre to the Southside Theatre?

Mr. Westbrook: I stated 5.3 miles.

Mr. Corinblit: Well, let us pass that one. It is a little hard for me to arrive at that in a hurry. That is [1519] going to be required to be derived and we will come back to it.

Now, the distance from the United Artists Theatre to the La Tijera—what distance do you state, counsel?

(Testimony of Alex Schreiber.)

Mr. Westbrook: 1.5.

Mr. Corinblit: I recall that figure and we will agree on that.

United Artists to the La Tijera and from the La Tijera to the Imperial.

Mr. Westbrook: La Tijera to the Imperial 5.1, according to my figures.

Mr. Corinblit: That is agreeable, 5.1. And from the Imperial to the Southside?

Mr. Westbrook: Imperial to the Southside would be approximately 1.7.

Mr. Corinblit: Our figures are 1.2. You say 1.7. We can work that out later.

Mr. Westbrook: It can't be 1.2. It is almost 2 miles. You can see it on the map.

Mr. Corinblit: All right, 1.2—1.7.

Now, the La Tijera to the Southside Theatre.

Mr. Westbrook: 6.8, according to my figures.

Mr. Corinblit: All right, 6.8. The La Tijera to the——

Mr. Westbrook: 3.6. [1520]

The Witness: La Tijera to Fifth Avenue, is that it?

Mr. Corinblit: Yes.

The Witness: That is only about a mile and three-tenths.

Mr. Mitchell: May that be stricken on the ground the witness isn't being inquired of?

The Court: It may go out.

Mr. Corinblit: We will leave the question of

(Testimony of Alex Schreiber.)

how far it is. Mr. Schreiber is certainly more familiar with the facts.

Mr. Westbrook: It may be 3.3, in that vicinity. I may have made a quick error in my calculation here.

Mr. Corinblit: All right. We will leave that question open.

The Paradise to the Imperial?

Mr. Westbrook: The Paradise to the Imperial, according to my figures, is 5.2. I believe your figure is 5.6. That is one we can't agree on the route on.

Mr. Corinblit: We will take 5.2 to 5.6.

The Paradise to the Rio?

Mr. Westbrook: Again we have a disagreement. Your figure is 6.8 and mine is 6.1.

Mr. Corinblit: All right. 6.1 to 6.8.

Paradise to the Southside? [1521]

Mr. Westbrook: My figure there is 6.9.

Mr. Corinblit: Our figure is 7.8.

Mr. Westbrook: That's right.

Mr. Mitchell: That's quite a difference.

Mr. Corinblit: Yes, it is.

Mr. Mitchell: How do you miss it by a mile? That is missing it by a mile.

Mr. Westbrook: My suggestion would be that we can scale these off on the map and get them close enough so there can't be any problem. If you want to do it during recess, counsel, I think we can resolve most of these questions.

Mr. Corinblit: All right. Somebody missed it by a mile, Mr. Mitchell.

(Testimony of Alex Schreiber.)

The distance from La Tijera to the Imperial?

Mr. Westbrook: We have that already, haven't we? 5.1.

Mr. Corinblit: Yes.

Mr. Westbrook: It is up on the blackboard.

Mr. Corinblit: 5.1. As I understand, the stipulation is as far as distributor Warner's is concerned, they played pictures day and date in the Academy and Southside, 3.6 miles apart.

Mr. Mitchell: This is just an argument. I made my stipulation and I don't want to have to restate it again, your Honor. [1522]

The Court: If you are not satisfied with your recollection of the stipulation, you can read it in the record tomorrow.

Mr. Corinblit: All right, sir. Prior to asking a question on this point, Mr. Schreiber, plaintiff will offer in evidence Exhibit 18-F, which is Twentieth Century-Fox, Lehman to Eckhardt of Twentieth Century-Fox, April 2, 1951, and Plaintiff's Exhibit 18-G, Eckhardt to Lehman, dated April 10, 1951.

The Court: They may be received in evidence.

The Clerk: Exhibits 18-F and 18-G.

(The exhibits referred to were received in evidence and marked Plaintiff's Exhibits 18-F and 18-G.)

Mr. Corinblit: I would like to read to the jury Exhibit 18-F. This is a letter from Syd Lehman to—

Q. Well, who was Mr. Lehman in April, 1951, Mr. Schreiber?

(Testimony of Alex Schreiber.)

A. Mr. Lehman was one of the officers of Exhibitors Service Company. It is a booking and buying organization for a group of independent theatres. They not only buy and book the pictures, but they also put your newspaper advertising in and they handle it, they pay your film bills for you, they pay advertising bills for you. They usually make a—many a time they made an insurance tie-up. They make give-away tie-ups with theatres. They are a regular service [1523] organization for independent theatres.

Q. When you say they pay film bills for you, you mean that they pay them and you reimburse them, is that right?

A. They bill you first, then you pay them, and then they pay the film companies.

Mr. Corinblit: All right. [1524]

* * * * *

Now, perhaps this is a matter to be stipulated between us. Counsel will you stipulate with us from time to time during the period August, 1950 to September, 1951 Twentieth Century-Fox licensed pictures to the Academy Theatre day and date with the Southside?

Mr. Johnston: I don't know.

Mr. Corinblit: All right.

Mr. Johnston: It is a matter of record, but I don't have the knowledge in my mind.

Mr. Mitchell: It was on a 7 day availability, I assume?

Mr. Corinblit: Yes, that's right.

(Testimony of Alex Schreiber.)

Mr. Johnston: I believe there were some occasions on which that occurred, Mr. Corinblit, but I can't tell you how many or during what period.

Mr. Corinblit: I appreciate that fact. Could we have the stipulation it did occur on occasion?

Mr. Johnston: I believe that is correct, subject to my examination of the records, which I have not done.

Mr. Corinblit: That is between the Academy and the Southside, that distance (indicating).

Q. Now, Mr. Schreiber, other than with respect to this letter from Mr. Eckhardt in April, 1951, did any representative [1526] of Twentieth Century-Fox ever offer to negotiate with you for a 7 day availability day and date with the Academy at your Paradise Theatre?

A. I don't believe we negotiated or received one picture with the Academy Theatre from Fox.

Mr. Corinblit: Now, turning to the distributor Paramount, during this period can we stipulate that there were occasions when the Academy Theatre played Paramount pictures on a 7 day availability day and date with the Southside?

Mr. Mitchell: I will have to look. [1527]

Mr. Corinblit: All right.

Mr. Mitchell: That is correct. There were some occasions but so we have the whole picture, there were also occasions when the Imperial and United Artists played Paramount pictures day and date and the La Tijera and the Imperial did so.

And the Paradise and the Southside did so.

(Testimony of Alex Schreiber.)

And the La Tijera and the Southside did so.

And the United Artists and the Century Drive-In did so.

Paradise and the Century Drive-In did so.

And the Southside and the Century Drive-In did so.

The La Tijera and the Century Drive-In did so.

And the Fifth Avenue and the Southside did so.

The Ritz and the Imperial did so all on a 7-day availability on the two 7-day availability that Paramount made available.

Mr. Corinblit: We will stipulate to those facts.

Q. (By Mr. Corinblit): Mr. Schreiber, turning to the distributor Columbia, did you observe that during this period that from time to time Columbia licensed pictures day and date between the Academy and the Southside? A. Yes.

Q. And did you observe, turning to the distributor United Artists, did you observe that United Artists from time to time licensed pictures between the Academy and the Southside [1528] day and date? A. That is right.

Q. And turning to the distributor RKO, did you observe that from time to time during the period you operated your theatre, the distributor RKO licensed pictures to the Academy day and date with the Southside? A. Yes.

Q. All right. Now, turning for a moment to the La Tijera and Imperial Theatres. Did you observe that during the period from the opening of the Paradise to September, 1951, that the distributor

(Testimony of Alex Schreiber.)

Warner's on occasion licensed pictures between the Imperial and the La Tijera day and date?

Mr. Mitchell: I thought we had a stipulation on that just a moment ago.

Mr. Corinblit: All right, all right. That takes care of Warner's.

Q. (By Mr. Corinblit): With respect to the distributor Universal, did you observe that from time to time they licensed pictures to the La Tijera day and date with the Imperial Theatre?

A. Yes.

Mr. Mitchell: I think we have a stipulation on Universal, Warner's and Paramount and nothing was said about Loew's because they don't sell pictures day and date in that area.

Mr. Corinblit: All right. We covered those three. [1529]

Then the only other one that we will want with respect to the distributor Columbia is, did you observe from time to time that, prior to September, 1951, that Columbia licensed pictures to the La Tijera and Imperial day and date? A. Yes.

Q. With respect to the distributor RKO did you observe from time to time that RKO licensed pictures to the La Tijera and Imperial Theatres day and date? A. I believe they did also.

Q. And with respect to the distributor United Artists did you observe that from time to time United Artists licensed the Imperial day and date?

A. I think they did.

Q. Mr. Schreiber, I will show you Plaintiff's

(Testimony of Alex Schreiber.)

Exhibit 1-Q, which is an offer form or request to offer form of Paramount, dated June 28, 1950.

(Handing document to Mr. Mitchell.)

Mr. Mitchell: I understand that this is simply an enclosure accompanying a letter with reference to two 7-day runs that were offered.

If you are going to use this document I think we should have the entire document.

Mr. Corinblit: All right, I will get to that other matter but if you will take a look at Exhibit 1-S.

(Handing document to Mr. Mitchell.) [1530]

Mr. Mitchell: You will agree that Paramount offered two 7-day runs.

Mr. Corinblit: Counsel, I think that is correct as of this time.

Mr. Mitchell: All right.

Mr. Corinblit: And the document will go into evidence if you will let me do it in my own way.

Mr. Mitchell: I don't want any intimation that Paramount offered only one 7-day run because with that letter there was an explanation that there were two 7-day runs being offered, is that right?

Mr. Corinblit: Not with Exhibit 1-S. There was no explanation at all accompanying that.

Mr. Mitchell: You are talking about 1-Q. There was an explanation with it, wasn't there?

Mr. Corinblit: There was a letter accompanying Exhibit 1-Q. I would like to go to Exhibit 1-S and then we will come back.

Q. (By Mr. Corinblit): Now, Mr. Schreiber, I will show you Exhibit 1-S, which is a request for

(Testimony of Alex Schreiber.)

offer form on the picture *Lawless* on the 7-day availability, and ask you whether or not—that letter is dated July 11, 1950, and I will ask you whether or not that document was received by you or your organization—Mr. Marco Wolff who at that time—it is addressed to you—and I will ask you if that was received [1531] by you from Paramount.

A. Well, it was either received by me or received by Marco Wolff. I believe it was received by me because they mailed it to me at my home.

Mr. Mitchell: That was before the theatre opened?

Mr. Corinblit: Yes. Now I will offer in evidence Plaintiff's Exhibit 1-S.

The Court: It may be received in evidence.

The Clerk: Plaintiff's Exhibit 1-S in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 1-S.) [1532]

* * * * *

Mr. Corinblit: Now, the form of the letter 1-S with respect to Paramount from July, 1950 on, will you stipulate with me, counsel, that this is the form which Paramount used for requesting bids for two runs?

Mr. Mitchell: Requesting what?

Mr. Corinblit: Requesting bids for two runs.

Mr. Mitchell: Two 7-day runs.

Mr. Corinblit: From July 11 through September, 1951.

(Testimony of Alex Schreiber.)

Mr. Mitchell: June 28, 1950, pursuant to a letter in which Paramount instructed the theatre owners as to how those two 7-day runs would be offered.

Mr. Corinblit: All right. We will move the date back to June 28.

Mr. Mitchell: The other Exhibit Q——

Mr. Corinblit: Beginning with the date you mentioned. That is the stipulation. That was the form of the letter offer.

Mr. Mitchell: Yes, with the letter of September 28 and these forms. That is what went out.

Mr. Corinblit: All right. Now, I don't think we need foundation for this so I will offer in evidence Plaintiff's [1533] Exhibit 1-P-1. That is the letter up to June 28, 1950.

The Court: It may be received in evidence.

Mr. Mitchell: That was accompanied with the request for bids for the picture *My Friend Irma Goes West*, which is 1-Q.

Mr. Corinblit: Yes.

The Clerk: 1-P-1 in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 1-P-1.)

Mr. Mitchell: I think Exhibit 1-Q should be introduced with it because that is what went out to Mr. Schreiber, the letter and Exhibit 1-Q.

Mr. Corinblit: All right. We offer in evidence, so we won't disturb Mr. Mitchell, Exhibit 1-Q.

The Court: It will be received in evidence.

(The document referred to was received in

(Testimony of Alex Schreiber.)

evidence and marked Plaintiff's Exhibit No. 1-Q.)

Mr. Mitchell: You are not disturbing me but I don't know why we don't go in order. [1534]

* * * * *

Q. (By Mr. Corinblit): Mr. Schreiber, under the Paramount plan, as indicated here, in order to obtain the 7 day availability on a Paramount picture, you were required to bid for Paradise with [1538] the theatres we named, which included the La Tijera, the theatres in Inglewood, including the Academy, the Fifth Avenue, and the Southside Theatre, Rio and Imperial, is that correct?

A. That is correct.

Q. There were two 7 day availabilities offered pursuant to that letter, is that correct?

A. That is correct.

Q. However, if one of the runs was won by the Paradise Theatre, under this letter would Paradise obtain any clearance over the theatres in Inglewood?

A. It is all according——

Mr. Mitchell: This word clearance is loosely used. They had a 7 day run and immediately following a 14 day run. There is no elapse of time under the plan. There is no clearance in that sense of the word. There is a priority of run. There is no elapse of time.

Mr. Corinblit: That is Mr. Mitchell's interpretation. I will change the question to avoid the problem.

Mr. Mitchell: All right.

(Testimony of Alex Schreiber.)

Q. (By Mr. Corinblit): If the Paradise Theatre received one of these runs, would you have the right under this Paramount plan, that the theatres in Inglewood not play the picture until you completed your exhibition, if you know the answer to that?

A. Only if they gave them a second 7 day picture, then [1539] there would be no clearance and we would play it day and date. That is where that imaginary line that they talked about came in. There was supposed to be one print on one side and one print on the other side.

Mr. Mitchell: That statement shows that the witness does not understand the plan and he is therefore giving something under the letter which he does not know anything about, because under this plan there is no imaginary line. I think we should take the letter and argue about the letter.

The Court: You mean the territory was not divided?

Mr. Mitchell: The territory was not divided by an imaginary line. Paramount had several plans. They were experimenting with this difficult area, and long before Mr. Schreiber came around they experimented with an imaginary line which Mr. Pirosh told you about. They found that didn't work out, so on June 28 they adopted the plan they are talking about here where theatres were given priority of run over theatres in their immediate vicinity. It is simple enough to explain if you know it, but I am pretty sure Mr. Schreiber does not under-

(Testimony of Alex Schreiber.)

stand it when he talks about an imaginary line. I know that he cannot understand it when he says that.

The Court: Mr. Schreiber has had experience, 30 years experience in the motion picture industry. He knows what these terms mean. He understands what you are talking [1540] about.

Will you tell me how this jury can understand it? I don't know. It seems to me that the jury is all at sea or would be at sea. Maybe I am not giving credit where credit is due as far as the jury is concerned. Maybe they are smarter than I think they are. I don't know.

Mr. Mitchell: Well, I suggest we take examples of what they did then. What he is being asked is a conclusion. I don't think he is qualified to testify on what the letter means.

The Court: May I ask a question?

Mr. Corinblit: Yes, sir.

The Court: Under this plan, did you get any Paramount pictures on the 7 day availability?

The Witness: I think we got one picture.

The Court: I think you can testify as to how the plan worked as far as that one picture in concerned.

Mr. Mitchell: He got two pictures, so he must know what he did on two pictures.

Mr. Corinblit: All right.

Mr. Westbrook: Sunset Boulevard and Samson and Delilah.

The Witness: What was the second one?

(Testimony of Alex Schreiber.)

Mr. Westbrook: Samson and Delilah.

The Court: In the interpretation of this letter, [1541] we are approaching again the same kind of problem we had when we asked these various witnesses to define substantial competition. Everybody knows what it means but nobody can define it. You all know what this letter means, but you all come to different conclusions.

Mr. Mitchell: This is a written instrument, your Honor. You can instruct the jury what it means. That is a question of law.

The Court: I am not going to tell the jury what it means.

Mr. Mitchell: We will help you. I really think we can agree with Mr. Corinblit on what the letter means.

The Court: You may find out that if the jury ever gets to the letter, if they ever remember the letter, you will have 10 different interpretations of what it means.

Mr. Mitchell: That is why we want you to interpret it.

The Court: No. You asked for the jury, or somebody asked for the jury. I didn't ask for the jury. That is a problem for the jury. I am not having anything to do with that at all. If you come up with 12 different answers, that is just too bad.

Mr. Mitchell: Can we have a moment, your Honor, to talk to Mr. Corinblit?

The Court: Surely. [1542]

(Interruption.)

(Testimony of Alex Schreiber.)

Mr. Corinblit: We have considered, and I will try to make a statement of the matter subject, of course, to the objection of counsel.

Mr. Mitchell: Let's take it theatre by theatre.

Mr. Corinblit: All right.

If under this Paramount plan the Paradise won one of the runs, it had no priority of run over the United Artists Theatre, that is, it had no right to insist to the distributor that the United Artists Theatre not play the picture until we were completed.

Or, the other way around, the United Artists Theatre could play day and date.

Mr. Westbrook: Or the Paradise could play day and date with the United Artists.

Mr. Corinblit: Or the Paradise could play day and date with the United Artists, that is correct.

Mr. Westbrook: Neither had any prior right.

Mr. Corinblit: That is correct. But the Paradise did, if it won one of the runs, have the prior right over the La Tijera.

Mr. Mitchell: In other words, the La Tijera and the Paradise could not play day and date.

Mr. Corinblit: That is one side of the coin.

Mr. Mitchell: That's right. [1543]

Mr. Corinblit: And the La Tijera and the Paradise could not play day and date. The Paradise and United Artists could play day and date, or putting the second point the reverse way, the Paradise, if it won one of the runs, had no right to insist that

(Testimony of Alex Schreiber.)

the United Artists wait until it completed the play-off before they started playing the picture.

Mr. Mitchell: That is true, but it did have a right to insist that the La Tijera wait.

Mr. Corinblit: That is correct.

Mr. Mitchell: And, vice versa, if the La Tijera won the run, it had the right to insist that the Paradise wait.

Mr. Corinblit: That is correct.

Now, if the La Tijera won one of the pictures, it had the right to insist that the Paradise not play the picture until the La Tijera had completed, and also had the right to insist that theatres in Inglewood, including the United Artists and the Fifth Avenue, not to play the picture until they had completed.

Mr. Mitchell: That is not quite accurate, Mr. Corinblit. They had the right to play the picture for 7 days, and then, since Paramount was offering two 14 day runs, if the La Tijera wanted to play the picture for 14 days, instead of 7, he would find himself playing day and date during the last 7 days.

Mr. Corinblit: Well, that's right, but I am talking about the ordinary situation of playing 7 day availability, a week. On that point, my statement was correct?

Mr. Mitchell: That's right.

Mr. Corinblit: All right. Now, to put it conversely so that we will be fair, it was not permissible under this plan for the La Tijera to play day and date with the Academy.

(Testimony of Alex Schreiber.)

That is correct, is it not?

Mr. Mitchell: That's right, and, similarly, if the Academy won the bid, the La Tijera would not be permitted to play day and date.

Mr. Corinblit: Right. But if the Academy won the picture, it could insist that the La Tijera and all the theatres in downtown Inglewood not play the picture until it was completed and could also insist that the Imperial Theatre and the Rio Theatre not play the picture until the Academy had completed its exhibition for the first week.

There may be some slight problem on that if they lap over.

Mr. Mitchell: That's right, but if the Academy won the picture, the Paradise could play day and date.

Mr. Corinblit: The Academy had no right to insist that the Paradise wait, that is correct.

Now, finally, if the Southside won the picture, it [1545] had the right to insist that the Imperial and the Rio not play the picture until the Southside had completed, but it did not have the right to insist that any other theatre wait, or, to put it the other way around, the Southside and the Paradise under the Paramount plan could play day and date. They had to bid against each other, but they could play day and date for the two runs. [1546]

Mr. Mitchell: In other words, the Paradise could play day and date with everybody in the area except the La Tijera?

Mr. Corinblit: Right. And they had to bid

(Testimony of Alex Schreiber.)

against everybody in the area including the South-side.

Mr. Mitchell: That is right.

Mr. Corinblit: And the theatre that received the widest possible protection was the Academy Theatre, isn't that correct?

Mr. Mitchell: I don't believe so at all.

Mr. Corinblit: If you will take the Academy Theatre under this Paramount plan——

Mr. Mitchell: I think the theatre that received the widest possible protection was the Paradise.

Mr. Corinblit: If the Academy won the picture, Mr. Mitchell, the Academy could play—the Academy could insist that no theatre in downtown Inglewood or the La Tijera or the Imperial——

Mr. Westbrook: The theatres in downtown Inglewood are 1.8 miles from the Academy according to my figures, and the others are 1.4 and 1.5, so I don't know what you mean by "the widest area of protection."

Mr. Corinblit: I am just seeking the facts. If the Academy won the picture they could insist that no theatre in downtown Inglewood or the La Tijera, counsel, which is [1547] not in downtown Inglewood, or the Imperial or the Rio not play until the Academy completed its playoff. That was the Paramount plan.

The Court: Well, I don't think I have ever seen a better demonstration of confusing a jury.

I doubt very much if any one of the jury under-

(Testimony of Alex Schreiber.)

stands that plan. I don't understand it and I doubt very much if the jury does.* * * * * [1548]

Q. (By Mr. Corinblit): Mr. Schreiber, under the Paramount Plan the Paradise Theatre was required to bid against the Southside Theatre? There is a dispute as to the distance. We have talked about distances ranging from 6.9 to 7.8 miles between the Paradise Theatre and the Southside Theatre.

The Southside Theatre is located at the corner of Vermont and Imperial and the Paradise is located at Sepulveda between Manchester and Century.

In your opinion were the Paradise and Southside Theatres in substantial competition?

A. No, absolutely no.

Mr. Mitchell: Let me ask you this, Mr. Corinblit. I know not only from what Judge Westover said, but from my study of the plan that it is somewhat confusing, but this much is clear, that if the Academy made the highest bid under the Paramount plan and won the run, then the only two theatres which could play the other run would be either the Southside or the Paradise. Isn't that correct?

Mr. Corinblit: That is right.

Mr. Mitchell: And the Southside and the Paradise, from August until December, 1950, were operated by the same man, Marco Wolff, right?

Mr. Corinblit: For those three months, yes.

Q. Now, under the Paramount plan, Mr. Schreiber, in order to get a 7-day availability you were required to bid against [1549] the Academy Theatre.

(Testimony of Alex Schreiber.)

In your opinion was the Paradise Theatre in substantial competition with the Academy?

A. It was not.

Mr. Mitchell: What did you say?

Mr. Corinblit: I said in order to get a picture on the 7-day availability, the Paradise had to bid against the Academy Theatre just as it had to bid against the Southside.

Mr. Mitchell: That isn't quite an accurate statement of our stipulation, Mr. Corinblit.

If the Academy won one of the runs the Paradise did not have to bid against the Academy. All the Paradise had to do was to have Marco Wolff either bid the most for the Southside or bid the most for the Paradise. That is true, isn't it? Isn't that true?

Mr. Corinblit: If the parties all submitted bids the Academy and the Southside could play day and date; the Academy and the Paradise could play day and date; the Paramount Company could award two runs, one to the Academy, one to the Paradise and one of the Academy and Southside.

Mr. Mitchell: It depends upon which one Marco Wolff put in the highest bid for—whether he put in the highest bid for the Southside or put in the highest bid for the Paradise. That is what the situation was, wasn't it? [1550]

Mr. Corinblit: Well, now, if the Paradise was to obtain a 7-day run under the Paramount plan, Mr. Mitchell, we have got a very simple question.

(Testimony of Alex Schreiber.)

The *Paradise* said, "This is the way you get pictures under this plan and no other way."

The *Paradise* had to bid and it had to bid against theatres and among the other theatres—that is, it had to bid against the *Southside* and among the other theatres that it had to bid against to get a picture in the *Paradise Theatre* was the *Academy*. There is no dispute about that, is there? We couldn't get a 7-day picture unless we put in a bid against the *Southside* for the *Paradise*, unless we put in a bid against the *Southside* and put in a bid against the *Academy*. Is that right?

Mr. Mitchell: They are not bidding against the *Academy* because the *Academy* can't have priority of run over the *Paradise* and the *Paradise* can't have priority of run over the *Academy*, so they are not bidding against the *Academy*.

The Court: Don't you think you have wasted enough time on this?

This witness has testified that he didn't consider any of these theatres in substantial competition except the theatre that was within three blocks of it.

Mr. Corinblit: The *Loyola Theatre*.

The Court: He already testified to that. [1551]

Mr. Corinblit: All right.

Q. I will show you Plaintiff's Exhibit 10-J for identification, which is a bid offer form from Warner Bros. dated September 22, and referring to the 7 day availability on the picture *Three Secrets* and ask you if that bid offer form was received by you or on your behalf from Warners. A. Yes.

(Testimony of Alex Schreiber.)

Mr. Corinblit: All right. We will offer Plaintiff's Exhibit 10-J in evidence.

The Court: It may be received in evidence.

The Clerk: 10-J.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 10-J.) [1552]

* * * * *

Mr. Corinblit: Now, I wonder if it would be possible for us to stipulate this was the form in which the Warners requests for offers went out.

Mr. Mitchell: That is true, from September 1, 1950, to May 9, 1951, which was the period during which formal competitive bidding was used by Warner Bros.

Mr. Corinblit: All right. We will accept that stipulation.

Q. Then, under the Warners bidding arrangement, Mr. Schreiber, it is a fact, is it not, that in order to obtain a 7 day picture on bid, the Paradise had to bid against the theatres I have named, including the Southside, is that correct?

A. That's right.

Q. I will show you Plaintiff's Exhibit 14-O for identification, Mr. Schreiber, and ask you whether or not this was received by Marco Wolff, Southside Theatres—well, I notice this is for the 14 day availability, but I will ask you if this was received by you or by Mr. Marco Wolff on your behalf.

A. Yes.

Q. All right.

(Testimony of Alex Schreiber.)

A. Mr. Corinblit, I would like to add, you didn't ask me, but if I may——

Mr. Mitchell: I can't hear.

The Witness: I would like to state—I haven't been asked, but I would like to state—— [1554]

Mr. Mitchell: Well, why don't we wait until he is asked.

Mr. Corinblit: All right.

Before I offer this, counsel, I wonder if we can get a stipulation that this is the form in which the 7 day bid went out from Universal.

Mr. Mitchell: I think there is a 7 day Universal request for bid already in evidence, if you want to use that.

Mr. Corinblit: That's all right.

Mr. Mitchell: It is Universal G-2. It is in evidence. Why don't you use that? That is in evidence already. That is the form that Universal used during the time it was engaged in formal competitive bidding.

Mr. Corinblit: The printed portion of Exhibit G-2 is the form that was the form used by Universal, is that right?

Mr. Mitchell: That is correct.

Mr. Corinblit: All right.

Q. Now, under this form, Mr. Schreiber, the theatres against whom you were required to bid are not stated,——

I will ask counsel if he can stipulate with me that the theatres against whom the Paradise was required to bid in order to obtain the 7 day availabil-

(Testimony of Alex Schreiber.)

ity on bid included the theatres in Inglewood, La Tijera, Academy and the Southside.

Mr. Mitchell: That is correct, but you heard the testimony of Mr. Marriott that he would license a second 7 day [1555] availability if the theatre submitting the bid would waive priority of run.

Mr. Corinblit: I heard that, yes.

The Witness: That was on Universal pictures?

Mr. Corinblit: Yes.

Q. I will show you, Mr. Schreiber, Plaintiff's Exhibit 6-T-2, after showing it to counsel.

(Handing document to counsel.)

First, counsel, can we get a stipulation with respect to 6-T-2, that this is the form in which Loew's sent out the bid letters during the period that those bid letters were sent out to the Paradise?

Mr. Mitchell: Yes.

Mr. Corinblit: We will offer Plaintiff's Exhibit 6-T-2 in evidence.

The Court: It may be received in evidence.

The Clerk: 6-T-2.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 6-T-2.)

Mr. Mitchell: So as to avoid confusion, do you want to say to whom or to what theatres such requests for bids were sent?

Mr. Corinblit: Yes. The theatres that were included in the bidding included the Paradise, the La Tijera, United Artists, Fox, the Fifth Avenue and Academy Theatres, [1556] and I don't know

(Testimony of Alex Schreiber.)

whether the Century Drive-In was included at this time or not. I don't believe it was.

Mr. Mitchell: I don't believe so.

Mr. Corinblit: I don't think it was.

Mr. Mitchell: Those theatres you have named and not the Southside or the Rio or the Imperial. They were not sent requests for offers. They didn't even play, they were not permitted to play 7 day.

Mr. Corinblit: All right.

Mr. Mitchell: This is Loew's.

Mr. Corinblit: This is Loew's.

Q. Now, Mr. Schreiber, with respect to any of the distributors who sent—who required the Paradise to bid in order to obtain the 7-day availability, did each one of these distributors under their plan reserve the right to reject all bids?

A. They did.

Q. All right. Now, Mr. Schreiber, I think yesterday the court asked a question about the matter of there having been surveys made—any surveys made by you and at one of the transcript you said there had been some surveys made and at another place you stated that you did not make the survey—any survey.

Would you state what is the fact concerning the existence of a survey made, not by you, but made under your direction and control in about October or November of 1950?

A. When we opened up in August, August 23rd, and we couldn't get any pictures, any first run pictures or any 7-day—

(Testimony of Alex Schreiber.)

Mr. Mitchell: Now, just a moment.

The Court: That is not responsive to the question at all. It may go out. [1558]

Q. (By Mr. Corinblit): Just answer this question: Was a survey made under your direction and control in about October or November of 1950?

A. Yes.

Q. And that was a survey which you had some people make by going out with cards and ask the householders in the Westchester area as to what theatre they went to as well as other questions, is that right?

A. That is right. [1559]

* * * * *

Mr. Mitchell: I will use a copy of Plaintiff's Exhibit 53 to show the witness, if I may, your Honor.

Mr. Corinblit: Can't we stipulate, counsel, that 53 is in evidence subject to correction. I don't think it went in.

Mr. Mitchell: Didn't that go in? Well, I think the correction has been made on it. I think there was only one picture that was improperly shown on it and I think you have agreed that that was an error.

Mr. Corinblit: Yes. And it is in evidence as Plaintiff's Exhibit 53 subject to correction, is that correct?

Mr. Mitchell: That is correct.

Mr. Westbrook: I don't think it has been offered.

(Testimony of Alex Schreiber.)

The Clerk: It has not been offered. It is still marked for identification.

Mr. Corinblit: Well, we will offer it in evidence.

The Court: What is the number?

Mr. Corinblit: 53.

The Court: It will be received in evidence.

(The exhibit heretofore marked Plaintiff's Exhibit No. 53, was received in evidence.)

Cross Examination

Q. (By Mr. Mitchell): Mr. Schreiber, you have testified that the Loyola played during its existence the pictures of every distributor. Do you know that the Loyola opened on October 3, 1946, or thereabouts? A. Thereabouts, yes.

Q. And we are talking about a period from October 3, 1946, to September 17, 1951, a five-year period. We are going to talk about the pictures of the defendant distributors, at least other than Twentieth Century-Fox.

Twentieth Century-Fox licensed all or most all of its pictures to the Loyola along with the Chinese and the Loew's State and the Uptown, isn't that correct?

A. And you have Fox Wilshire, also.

Q. But I want to talk about the pictures that played the Loyola during this five-year period distributed by Loew's, Paramount, Warner's and Universal. You have the play-off there of the Loyola Theatre.

The only pictures of Loew's during that five-year

(Testimony of Alex Schreiber.)

period that played in the Loyola Theatre were the pictures *Two Smart People* and *Cockeyed Miracle* in 1946, is that right?

A. You are talking now about the five years, including the time the Paradise Theatre was opened?

Q. Up to September 17, 1951. [1561]

A. All right.

Mr. Corinblit: We will stipulate that there were those two pictures only from Loew's.

Mr. Mitchell: All right.

Q. In December, 1946, right?

A. The date is December 11 to the 24th, two weeks.

Q. Will you also stipulate that the only picture of Universal that played in the Loyola during that period was *Woman's Vengeance* in 1948, right?

A. I haven't checked it yet.

Q. I thought maybe your counsel wanted to stipulate.

Mr. Corinblit: We will let him look through it. I think that is correct, but he can check.

Q. (By Mr. Mitchell): Look at September 12, 1948, and you will see it.

A. But I want to go beyond that.

Q. All right. Do it.

A. That's right, with one question I have in mind. *Eagle-Lion*, if I am not mistaken, at one time released some pictures through Universal. Whether it was this period or not, I am not sure.

Q. We are talking about pictures produced and

(Testimony of Alex Schreiber.)

released by Universal. Just one, isn't that right?

A. That is correct.

Q. In the five-year period. [1562]

A. That was for seven days.

Q. Do you remember that picture, Woman's Vengeance? A. No, I do not.

Q. Well, you were running a group of theatres in Detroit at that time. Do you remember that was a B picture?

A. No, I do not remember it was a B picture.

Q. Maybe you didn't even play it in your theatres.

A. I may have played it in all our theatres.

Q. The Loew's pictures Two Smart People and Cockeyed Miracle, do you remember those were B pictures? A. They were not B pictures.

Q. You considered those A pictures?

A. I consider a picture that played two weeks in the Loyola Theatre as a top picture is not a B picture.

Q. Do you remember these pictures?

A. Two Smart People?

Q. Yes.

A. I have a faint recollection. I couldn't tell you who was in it and how many hundred thousand dollars or million dollars it cost to make, no, I can't tell you that, but I can tell you that a picture that played the Loyola Theatre in December, 1946, when they were open and played two weeks was a big picture and it was an A picture. Cockeyed Miracle

(Testimony of Alex Schreiber.)

that played with it might have been a B picture on the second section of the program. [1563]

Q. Your statement as to the quality of the picture is based on a conclusion that you reach from the fact that it played the Loyola Theatre?

A. No. It played the Loyola two weeks plus the other Fox houses, also.

Q. Listen to my question, Mr. Schreiber, and we will get along much faster, if you will listen to me and don't argue.

You base your statement as to the quality of the picture upon the fact that it played the Loyola, right?

A. Two weeks.

Q. Two weeks, is that right?

A. Yes, sir.

Q. You don't remember the pictures?

A. Offhand, no, I do not.

Q. Now, Paramount during that entire five-year period played two pictures in the Loyola, and just two, Golden Earrings and Captain China. Will you check that?

A. I will. [1564]

Mr. Corinblit: We will stipulate to that fact.

Mr. Mitchell: All right. I will accept the stipulation.

Q. (By Mr. Mitchell): Golden Earrings played in 1947 and Captain China in 1950. Do you stipulate to that?

Mr. Corinblit: Yes.

Mr. Westbrook: February, 1950, on Captain China.

Mr. Mitchell: Yes.

Q. (By Mr. Mitchell): Do you remember talk-

(Testimony of Alex Schreiber.)

ing to Mr. Smith and Mr. Taylor about those two pictures? A. I sure do.

Q. And they told you that Golden Earrings was put in the Loyola because there was a booking congestion in the two Fanchon & Marco first run theatres, the Paramount Downtown and the Paramount Hollywood, is that right?

A. Words along that line, yes. He said it was a coincidence.

Q. And they told you Captain China was played in that theatre because Fanchon & Marco wouldn't play it as a top of the bill in the Paramount Downtown and the Paramount Hollywood and so they took it away from them and played it in the Loyola?

A. No, he didn't say that.

Q. You don't remember that?

A. He did say that that was another coincidence and [1565] they were blocked up on their bookings.

Q. All right. Now, during this entire 5-year period Warner Bros. played just two pictures in the La Jolla in 1949, is that right?

Mr. Corinblit: We will stipulate to that fact.

Mr. Mitchell: One was One Last Fling and the other House Across The Street?

Mr. Corinblit: Correct.

The Witness: Have you the dates, Mr. Mitchell? I can find them quicker.

Mr. Mitchell: Both in 1949.

The Witness: Do you have the month?

Mr. Mitchell: I don't have the month.

(Testimony of Alex Schreiber.)

The Witness: I have one here.

Mr. Mitchell: Your counsel has stipulated to it.

The Witness: Okay.

Mr. Mitchell: And we will move along.

The Witness: All right.

Mr. Mitchell: Your Honor, the compilation which, with the assistance of the witness and the stipulations that have just been made, I would like to offer this in evidence.

The Court: It may be received in evidence.

The Clerk: Whose exhibit is this?

Mr. Mitchell: We can call it a joint distributor exhibit. It doesn't make too much difference.

The Clerk: Is that a new one?

Mr. Mitchell: Yes.

The Clerk: Joint Distributors Exhibit R in evidence.

(The document referred to was received in evidence and marked Joint Distributors Exhibit R.)

Q. (By Mr. Mitchell): During the period that your theatre was open from August 23, 1950, to September 17, 1950, Loew's, Warner's, Universal and Paramount did not play any pictures at all in this Loyola Theatre.

Mr. Corinblit: You said until September, 1950, counsel.

Mr. Mitchell: September, 1951, I am sorry.

Mr. Corinblit: We will stipulate to that fact.

Q. (By Mr. Mitchell): Now, in order to play in a theatre such as the Paradise on a first run

(Testimony of Alex Schreiber.)

policy you would have to have approximately 30 pictures a year for the top half of a double bill and 30 pictures a year for the lower half of a double bill or approximately 60 pictures a year, is that right? A. For first run policy?

Q. No, for a 7-day policy or for a first run policy.

A. For first run there is a possibility of 30 to 40 pictures on the top half and 30 to 40 on the bottom half, yes.

Q. You certainly couldn't play the year with only two pictures, could you?

A. No, you could not. [1567]

Q. You have had a long experience in the theatre business, haven't you? A. Over 30 years.

Q. You have operated at one time as many as 24 theatres?

A. That is right, my associates and myself.

Q. That is what you call a theatre chain, isn't it?

A. People would refer to it as a theatre chain or theatre group.

Q. Well, I heard you referred to Fox-West Coast as a chain because they operate a number of theatres. You also operated a number of theatres in the sense of a chain, didn't you?

A. In the sense of a chain of Fox, no.

Q. At the time of the operation of the Paradise Theatre you were operating six other theatres, is that right? A. In Detroit?

Q. In Detroit or thereabouts.

(Testimony of Alex Schreiber.)

A. Approximately six theatres.

Q. And you still operate the Paradise Theatre?

A. We do.

Q. During the time that you were operating the Paradise Theatre and in getting ready to operate it you spent a great deal of your time in Detroit, didn't you?

A. What do you mean by a "great deal of time?" [1568]

Q. Well, you spent about half of your time away from Los Angeles? A. It is possible.

Q. Well, it is not only possible but it is true, isn't it? A. Not unless I checked the time.

Q. Well, I can check the time with you if you want to make a point of it.

Do you want to dispute the question that I say you spent about half the time away from Los Angeles?

A. No, I won't dispute it. I say it is possible.

Q. And it is also so?

A. I spent as much time as was required in Los Angeles to take care of my business, and I spent as much time as was necessary in Detroit to take care of my business, plus the fact that I had a daughter and three grandchildren or two grandchildren at that time, and the rest of my family was in Detroit. I spent some time with my family also.

Q. Well, you spent about half of your time away from Los Angeles, didn't you?

A. That is possible, yes.

Q. And the operation of your theatre was actu-

(Testimony of Alex Schreiber.)

ally carried on by Marco Wolff—that is, the buying and booking was carried on by Marco Wolff from August to December, 1950, and by this exhibitor service from 1950 to September, 1951? [1569]

A. That is correct. They were the buyers and bookers—they were the buying and booking service only.

Q. They are the ones that selected what pictures you were going to play or going to buy?

A. They are the ones that tried to secure pictures for the Paradise Theatre. They had no financial interest in the Paradise Theatre.

Q. I understand that, but this day-to-day function of getting pictures you didn't carry on at all—it was carried on by Marco and by Syd Lehman largely?

A. That is correct. They did the negotiations and held the conferences and the telephone calls and the visits with the distributors, yes.

Q. Now, you are familiar with the theatres in the area involved in this litigation and you are familiar with who operates those theatres.

The Paradise is your theatre. The Loyola is a Fox-West Coast theatre operated by Fox-West Coast, right? A. That is correct.

Q. The La Tijera is operated by, or was operated during this period of time by William Kupper?

A. He was the general manager and the man that I understand was doing the buying and booking of pictures for the La Tijera Theatre.

Q. And he had no connection with Fox-West

(Testimony of Alex Schreiber.)

Coast at all? [1570] A. I don't know.

Q. Well, he was what you would call an independent, isn't he? A. Yes. [1571]

Q. But you consider yourself an independent?

A. Yes.

Q. And you consider they are an independent?

A. I would say so, with the exception that H. J. Griffith had an interest in the theatre, and that was a large chain of theatres of Texas and Oklahoma.

Q. You had an interest in other theatres, too, didn't you?

A. Just with my associates. No chains.

Q. Just a group?

Mr. Corinblit: Six.

The Witness: If you want to make a comparison, I can say, if I can do it without being condemned by the judge——

Q. (By Mr. Mitchell): No. I say you call your theatres just a group?

A. A group or an independent chain of theatres. Rather than somebody calling out the theatres at one time, when they want to talk about the Schreiber theatres, instead of calling the individual theatres, they will say the Schreiber group of theatres or the Schreiber chain of theatres.

Q. Do you know who operated the Centinela Drive-In?

A. Centinela Drive-In was operated, from all I know, I believe they called themselves the Alladin Drive-In Theatres, managed by the men I knew in there, Jack and Izzie Berman.

(Testimony of Alex Schreiber.)

Q. Not connected with Fox Theatres? [1572]

A. I don't know.

Q. You don't know too much about the motion picture operation in this Los Angeles community?

A. I don't know what theatre interests people have. I can tell you my theatre interests. I don't know what other people have. Just what I heard.

Q. The Fox Theatre was operated by Fox West Coast?

A. I understand the Fox corporation theatre chain operated the Fox Theatre.

Q. During the period of the operation of your Paradise Theatre, the United Artists Theatre was operated by the United Artists Theatres Circuit, right? A. I understand that is correct.

Q. The Academy and Fifth Avenue were both operated by what you call the Fox West Coast chain, right? A. That's right.

Q. The Southside Theatre was operated by Marco Wolff?

A. Yes, but I believe he called it the Southside Theatre Corporation, which was the same corporation that was booking and buying for the Paradise, but had no interest in the Paradise Theatre financially. They just were a booking service. That's all the corporation was. We had nothing to do financially with the Southside Theatre or the Southside Theatre Corporation had nothing to do with the Paradise.

Q. I understand that. [1573]

A. It was just a booking service only.

(Testimony of Alex Schreiber.)

Q. And the man that did the booking for the Paradise Theatre in 1950 was Marco Wolff?

A. With the assistance of his brother Roy and with the advice and counsel of my son Max and myself when I was in town or over long-distance telephone.

Q. He also did the buying and booking for the Southside, didn't he, Marco? A. Oh, yes.

Q. And he also did the buying and booking for the Baldwin Theatre, didn't he?

A. I understand he did, yes. That was his theatre.

Q. You know he did, don't you?

A. I understand he did, yes, but I did not know whether it was the Southside Corporation or another corporation, Mr. Mitchell.

Q. But regardless of what we call the corporate name, it is Marco Wolff, isn't it? A. Yes.

Q. And it is Marco Wolff that does the buying and booking for the Manchester Theatre, right?

A. That's right.

Q. And also for the Rio?

A. That is correct.

Q. And also for the Paramount Downtown and the Paramount Hollywood Theatres? [1574]

A. That is correct.

Q. The Rio Theatre, as we say, was operated by Marco. The Imperial Theatre on Imperial Boulevard was operated by Mr. Kupper, wasn't it?

A. That is correct.

(Testimony of Alex Schreiber.)

Q. Century Drive-In, do you remember who the Century Drive-In was operated by?

A. They called themselves the Pacific Drive-In Theatres, and the head man of that organization now is a party by the name of Bill Forman. Whether he was the head man in 1950 or 1951, I don't remember. I believe there was Gus Diamond and a fellow named Cabrillo, I think were the big men then, and I believe those are former Fox men or associated with Fox.

Q. Well, when you started looking for a theatre site, there wasn't any La Tijera, was there, when you started looking for a theatre site?

A. In 1947?

Q. Yes.

A. I don't believe they had bought their property yet.

Q. And there wasn't any Southside?

A. In 1947?

Q. Right.

A. I don't remember when they bought that property.

Q. Would it sound right if I told you they started operating in September, 1949? [1575]

A. That sounds like the right time. September 1949.

Q. There wasn't any Rio?

A. In 1947, you are asking me?

Q. Yes, when you first came out here.

A. I don't know whether it was open in 1947.

(Testimony of Alex Schreiber.)

Q. There wasn't any Imperial, either, was there?

A. Imperial? I remember the Imperial being built, because the contractor that built our theatre took me and showed me the Imperial Theatre while it was under construction, but I don't know the time that it opened.

Q. It opened before your theatre opened, didn't it?

A. I don't know. I believe it did.

Q. So did the Rio?

A. I believe it did, but I am not sure.

Q. The Fox Theatre in downtown Inglewood was rebuilt in 1949, wasn't it, or was built?

A. It was rebuilt because that is another theatre that the contractor that built the Paradise took me to while he was rebuilding the theatre.

Q. The Century Drive-In started operating in June 1949?

A. I don't know when they started.

Q. Before you started operating, didn't they?

A. Century?

Q. Yes. [1576]

A. They may have, but I am not positive.

Q. The Centinela Drive-In started operating in April 1950, is that right, about?

A. Before we did?

Q. Yes, before you did.

A. I don't know. I don't think so, but it is possible.

Q. Well, there was a considerable number of new theatres came in there in the period from 1949

(Testimony of Alex Schreiber.)

to 1950, were there not? You remember that, don't you? A. 1949 to 1950?

Q. Yes.

A. Yes, there were a lot of theatres built and there were a lot of people.

Q. That's right, a lot of theatres built down in the Inglewood-Westchester area.

A. Yes, and a lot of people.

Q. A lot of new ones?

A. A lot of people and a lot of factories.

Mr. Mitchell: This is a good place, if your Honor wishes to stop.

The Court: That is one thing I have got counsel trained on in this court. When it is 12:00 o'clock, right on the dot, they are ready to quit.

Mr. Mitchell: I don't have eyes in the back of my head, but I hit it on the nose. [1577]

The Court: Ladies and gentlemen of the jury, again we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, you are not to formulate or express any opinion as to the rights of the parties until the case is finally submitted to you.

With that admonition, we will now recess until 2:00 o'clock this afternoon.

(Thereupon, a recess was taken to 2:00 p.m.)

Thursday, July 25, 1956, 2:00 p.m.

The Court: Do you stipulate the jury are present and in the jury box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: Yes, your Honor.

The Court: You may proceed.

ALEX SCHREIBER

the witness on the stand at the time of recess, having been heretofore duly sworn, resumed the stand and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Mitchell): Mr. Schreiber, in your long experience in the motion picture exhibition business, you are familiar with the fact that motion pictures are licensed in successive runs?

A. I don't know what you mean by "successive runs."

Q. Well, first run, second run, third run, and so on.

A. Yes.

Q. And a picture doesn't play all the theatres in a community at the same time. It plays in successive runs, isn't that the way the pictures are played?

A. Usually all over the city. I think they release the same way.

Q. All over the country they play in successive runs, [1579] don't they?

A. Yes.

Q. First run and then a second run and then a third run and then a fourth run, and so on until the picture has exhausted its grossing capacity?

A. That is right. They have a first run maybe downtown and multiple first run and second run can be played all over the city—three prints, five prints, 20 prints.

(Testimony of Alex Schreiber.)

The third run can be 20 prints, 30 prints. Like Paramount will release the picture—you will notice in the paper 29 runs. That may be 29 21-day runs. Then there will be maybe 20 and 29-day runs and then maybe 30 and 35-day runs.

They go down the line but they run all over the city, but they are released in steps.

Q. You call them steps? A. Yes, sir.

Q. I think Judge Yankwich called them staggered runs.

The same picture will play first in one theatre and then in another theatre and then in another theatre, and so on?

A. But all over the city.

Q. Week after week?

A. They can play all over the city.

Q. In varying ways they play successively?

A. Yes, but all over the city.

Q. You recognize the fact that some exhibitors have to [1580] play first and somebody second, and so on—you recognize that, don't you?

A. Yes, but there are still a lot of second and a lot of third and there are a lot of fourth—

The Court: Suppose you answer the question. Do you understand the question?

The Witness: Yes. I was wondering if he means one first, second, third, fourth, fifth, and sixth. That isn't true.

Q. (By Mr. Mitchell): I don't mean any special number, Mr. Schreiber. I mean that some exhibitor

(Testimony of Alex Schreiber.)

or exhibitors have to play first and some of them have to wait until later.

A. Yes. If you say "some," yes — if you say "some," yes.

The Court: May I ask this witness a question?

The Witness: Yes, sir.

The Court: You understand what is meant by runs and clearances, do you not?

The Witness: I do—I think I do.

The Court: As used in the motion picture industry?

The Witness: I believe I do.

The Court: Based upon your 30 years' experience in the motion picture industry, don't you believe that runs and clearances are necessary for the orderly exhibition of motion pictures? [1581]

The Witness: Yes, sir.

Mr. Mitchell: Thank you, sir.

Q. (By Mr. Mitchell): And you also recognize that a distributor of motion pictures, the owner of the picture just can't please all exhibitors?

Mr. Corinblit: I will object to that, your Honor, as calling for a conclusion of the witness—"can't please all exhibitors."

Mr. Mitchell: He is an expert and he should be able to answer that question.

The Court: If all exhibitors were satisfied it would be an exception, I think, rather than the rule.

I don't know of any industry in which all the retailers are satisfied, for instance.

Mr. Corinblit: Producers or distributors.

(Testimony of Alex Schreiber.)

The Court: And I don't know of a case where all lawyers are satisfied. You may proceed.

Mr. Mitchell: You mean you want me to ask that question?

The Court: Go ahead. I haven't stated an objection.

Q. (By Mr. Mitchell): All right. Well, you recognize the fact that a distributor can't please all his customers, don't you? A. That is right.

Q. Every exhibitor with a good theatre wants to play just as early as he can, doesn't he? [1582]

A. That is right.

Q. And he wants to pay just as little film rental as he can? A. Not necessarily.

Q. I see.

The Court: You mean to say there isn't always a contest between the exhibitor to get the film for as little as possible and for the distributor to get as much as he can out of a film?

The Witness: Well, that is the way the distributors say. They say that the exhibitors want to steal the film and the exhibitors say the distributors want to take the last dollar.

The Court: You said "not always." In negotiations you are always negotiating, aren't you, for just a little bit less money or a little better terms?

The Witness: Yes, your Honor, but they don't let us negotiate.

The Court: I am not talking about that. I am talking generally and not specifically.

The Witness: Generally the negotiations is what

(Testimony of Alex Schreiber.)

is being done and maybe 95 per cent of all the theatres in the United States are negotiating for pictures, yes, sir.

The Court: And to get them on the best terms possible?

The Witness: That is right. One wants it cheap and another one wants to pay a high price. [1583]

Q. (By Mr. Mitchell): That is what I asked you. It is a barter business? A. It is.

Q. No fixed price for a picture. Each one is a scrap in which the exhibitor tries to get it as cheaply as he can and the producer tries to get as much out of it as he can?

A. That is right. [1584]

Q. Now, with respect to this desire of exhibitors to play as early as possible, you know, don't you, that the La Tijera tried to get first run Los Angeles day and date with the show case theatres from all the distributors, don't you know that?

A. I understand they tried that, yes, sir.

Q. They tried?

The Court: Just a minute.

Q. (By Mr. Mitchell): And when they didn't get——

The Court: Just a minute, Mr. Mitchell.

Mr. Mitchell: I'm sorry.

The Court: Did they try that before you tried it?

The Witness: Yes, they did.

The Court: They tried it before you?

The Witness: Yes.

Q. (By Mr. Mitchell): And they didn't get it?

(Testimony of Alex Schreiber.)

A. They did get some pictures, I understand.

Q. Well, they sued?

A. They went to court from what I understand and what I was told when I came to Los Angeles.

Q. Would it refresh your recollection if I say to you that the only first run pictures they got were one or two United Artists pictures?

A. I remember——

Q. Well, you can answer that yes or no, either you remember [1585] or you don't.

A. I don't remember if it was only United Artists, no, I do not.

Q. I see.

A. I know they did play some United Artists, but whether they were all or not, I do not know.

Q. You know, also, that the Southside Theatre tried to get first run Los Angeles day and date with the showcase theatres, don't you?

A. No, I don't know whether they tried first run.

Q. Didn't Marco ever tell you that?

A. No, I don't believe so.

Q. Didn't he ever tell you that they sued, also?

A. The Southside?

Q. The Southside Theatre.

A. I don't think so. It was the Manchester and Baldwin.

Q. We will come to them. You don't know about the Southside? A. No, I really don't.

Q. The Manchester Theatre is another theatre run by Marco Wolff? A. That's right.

Q. He sued on behalf of that theatre because he

(Testimony of Alex Schreiber.)

hadn't been given first run Los Angeles day and date with the show case theatres, didn't he? [1586]

Mr. Corinblit: Just a minute. Your Honor, I will object to that question as being irrelevant and immaterial. It may be Mr. Mitchell wants us to bring into evidence the lawsuits of other independent theatres and the rejection by the defendants of every independent theatre that ever tried. I don't think he wants to do that. I think we are going into an area that is going to be very broad. I will object on those grounds.

The Court: Overruled.

Q. (By Mr. Mitchell): Do you remember the question now?

The Court: Just a minute.

The Witness: I am trying to remember what you asked me.

The Court: Just a minute, Mr. Schreiber. I think I should tell the jury that in my evaluation of this case, I think there are two problems here for the jury to consider relative to whether or not there was a conspiracy. First, was there a conspiracy relative to first run? And, second, was there a conspiracy relative to 7 day run?

We have evidence here about first run Los Angeles and we have evidence about 7 day run in Inglewood or the Westchester area. So remember now there are two problems or questions for you to answer.

Was there a conspiracy relative to first run? You

(Testimony of Alex Schreiber.)

may decide there was no conspiracy relative to first run. [1587]

Was there a conspiracy relative to 7 day run in Inglewood? You may decide there is a conspiracy on 7 day run.

So remember, now, you have got two areas here in which you are going to decide this question of conspiracy.

All right, Mr. Mitchell.

Mr. Mitchell: By your statements, your Honor, you don't mean to infer in any way that there was or was not a conspiracy on either first run or 7 day?

The Court: Oh, no. I am not indicating to the jury anything at all. I am trying to explain to you the problem. I don't want you to get any idea in your mind that I have any opinion as to whether there was not a conspiracy. The fact of the matter is that I am keeping an open and free mind and I have come to no conclusion, just as you are doing. You shouldn't come to any conclusion.

But I am trying to point out to you this problem. This is a two-fold problem. When they talk about first run Los Angeles, remember there is the question of the first run conspiracy. When they talk about the 7 day run, it is the conspiracy in the Inglewood-Westchester area.

Q. (By Mr. Mitchell): Let me ask the question again so it will be a little fresher in your mind. You knew Marco Wolff on behalf of the Manchester had tried to get first run Los Angeles day and date with the show case theatres and when [1588] he

(Testimony of Alex Schreiber.)

failed he sued? A. That's right. I know that.

Q. You know that the same thing happened in respect of the Baldwin Theatre which Marco also operated?

A. I knew he had a lawsuit, yes, sir.

Q. You knew he was trying to get first run Los Angeles, didn't you? A. That's right.

Q. And you also knew that the Crown Theatre in Pasadena, represented by the same attorney that represented you, Mr. Seymour Simon, was trying to get first run Los Angeles for the Crown, and when he didn't get it, sued, don't you?

A. I don't know if he tried first run or if he tried 7 day run, but he did have a lawsuit which was settled.

Q. You knew also that the Picwood Theatre over in the West Los Angeles area had tried to get first run Los Angeles, and when it didn't get it, sued?

A. I don't know if they sued for first run or 7 days, but they got 7 days, I understand, in their suit.

Q. Well, they bid.

Mr. Corinblit: Oh, now, now, don't state the contrary facts.

Q. (By Mr. Mitchell): You know they bid?

A. No. I understand that they made a division of product with Fox Village and Fox Bruin Theatres, and eventually [1589] moved from 7 days to where they are now playing first run Los Angeles pictures.

Q. On a bid? A. And are very successful.

(Testimony of Alex Schreiber.)

Q. On a bid? A. First run?

Q. On a bid? A. First run, yes.

Q. That's right.

A. First run on bid, first run Los Angeles.

Q. You knew, also, that the Bard's Adams over on West Adams Street, somewhere near the Baldwin Theatre, tried to get first run?

A. I know nothing about the Bard Theatre.

Q. Did you play double bills in your theatre, Mr. Schreiber? A. Which theatre?

Q. Paradise.

A. Did we play double bill?

Q. Yes. A. Yes, we did.

Q. Who made the determination of whether you would play double bills or single bills?

A. Who made the determination?

Q. Yes. [1590]

A. It was a policy in Los Angeles to play double bill and we played what the other theatres were playing.

Q. You made the decision, didn't you?

A. For the Paradise Theatre?

Q. Yes. A. Yes, sir.

The Court: Mr. Mitchell, I think possibly somebody could explain what is meant by double bill. I understand what is a double bill. Maybe the jury doesn't.

What is a double bill?

The Witness: Double bill is two complete features on the same program. Some theatres, if they are in a certain locality and are lucky, being located

(Testimony of Alex Schreiber.)

where they are, can play on the same program two top pictures. Without mentioning names, it might start an argument here, they try, the exhibitor tries to get two good pictures, and then when they play two good pictures on a program, my own experience, where I was in the lobby of the theatre, I heard the people come out and they would say, "Gee, that was a wonderful picture." They talked about one of them. "But why did you play the other picture. That was terrible."

And right behind them, two or four people would come out and say, "Gee, that was a wonderful picture, but why did you play the other picture?" They were talking about the other picture. One or the other of them was good. [1591]

It is hard to please the people.

So maybe you put two good pictures, maybe a musical and an action, maybe a western, an action, maybe a melodrama, a mystery. You try to put two good pictures on the bill to please your entire audience, if that is possible, with one picture or the other.

Q. Anyway, for your theatre, you make the determination of whether you play a double bill policy or a single picture policy?

A. That's right, except, Mr. Mitchell, occasionally a good picture comes out two hours and 20 minutes or two hours and 30 minutes, and you will play that alone with what we call a featurette, about 30 minutes.

Q. You make that decision for your theatre,

(Testimony of Alex Schreiber.)

don't you? A. That's right.

Q. You would also recognize the right of a distributor to decide how many pictures he will make available in a given area, wouldn't you?

Mr. Corinblit: Well, your Honor, I object to that as calling for a conclusion, because recognizing a right is a question of law, not a question of fact.

The Court: He asked about what a distributor does. Read the question.

(Question read.)

The Court: Objection overruled. You can answer [1592] that yes or no.

The Witness: Yes, but may I explain the reason for the yes?

Q. (By Mr. Mitchell): One reason is that he owns the picture, doesn't he? A. Yes.

Q. All right.

A. There are other reasons in addition to that. May I answer that or continue with the question?

Q. As far as I am concerned, you have answered the question. You recognize the right, so that is it, so far as I am concerned. Maybe your attorney will want to ask you when it comes his turn.

Mr. Corinblit: Mr. Mitchell, you made a great play about wanting people to have an opportunity to explain answers, and I think the witness ought to be permitted, if he wants to explain, to go ahead.

The Court: I don't know how the answer needs explaining. He says he recognizes the right.

Mr. Corinblit: Well, perhaps it doesn't need it. I won't press the point. [1593]

(Testimony of Alex Schreiber.)

Q. (By Mr. Mitchell): Mr. Schreiber, before you ever asked any distributor for a motion picture for your Paradise Theatre you hired a lawyer, didn't you?

The Court: Mr. Mitchell, my experience has been that motion picture producers, motion picture distributors, motion picture exhibitors need lawyers. They have been hiring lawyers for years and years and years and every theatre has a lawyer.

Mr. Mitchell: Perhaps that has been your experience, your Honor, because you get these lawsuits, but——

The Court: Maybe a lot of theatres don't need lawyers.

Mr. Mitchell: But people, the theatres that buy pictures don't usually start out with a lawyer, your Honor.

Mr. Corinblit: All the distributors have them, your Honor, every one of them.

The Court: Ordinarily these exhibitors form a corporation and the first thing they have to do is employ a lawyer to form a corporation. So lawyers are necessary evils. No question about it. Sure, he had a lawyer.

Mr. Mitchell: Well, let us go on then.

Q. You hired Seymour Simon, didn't you?

A. I did.

Q. Before you ever asked a distributor for a picture.

The Court: Mr. Mitchell, let us clarify this. Remember that this witness was in Detroit. He had

(Testimony of Alex Schreiber.)

theatres in Detroit. [1594] I don't know whether he hired Mr. Simon when he was in Detroit for his theatres in Detroit, or whether he hired Mr. Simon to represent him out here in California.

Now, clarify for what purpose he was hiring a lawyer. Was he employing him for the Detroit theatres or did he employ him for the Los Angeles theatre?

Q. (By Mr. Mitchell): Answer the judge's question, if you will.

A. I will be glad to. Mr. Seymour Simon was hired by me for my Detroit theatres when they told us we just couldn't get any run, any second run on the drive-in theatre. That is when I hired Mr. Seymour Simon and we went on——

Q. We don't need to go into your Detroit business. You had litigation in Detroit too, then.

Mr. Corinblit: Now, Mr. Mitchell doesn't want him to finish his answer, your Honor.

The Witness: I hired Mr. Seymour Simon when I was there in Detroit, because there also I couldn't get pictures or we couldn't get pictures or our company could not get any pictures. Mr. Seymour Simon very easily got us pictures.

If I didn't have Mr. Seymour Simon I would never have gotten those pictures. I may have gotten them later.

The Court: Let me ask you a question. When did you first employ Mr. Simon?

The Witness: In about March or April when I met him in [1595] New York, of 1950, prior to the

(Testimony of Alex Schreiber.)

opening of our theatre in August 1950, prior to that.

The Court: You hired him first in March or April?

The Witness: That is right.

Mr. Corinblit: Your Honor, the witness does not understand your question, sir, as he indicated.

The Court: I don't know. You may not understand it, but the witness understood it. He answered the question.

I will ask the witness again, when did you first employ Mr. Simon?

The Witness: In Detroit?

The Court: When?

The Witness: Oh, about two years prior to the Paradise Theatre opening—maybe three years prior when I had trouble getting pictures in Detroit.

Q. (By Mr. Mitchell): When did you first hire Mr. Simon in connection with the Paradise matter?

A. I believe in about February, March or April of 1950.

Q. And it was Mr. Simon who helped you draft the original demand that you made for first run Los Angeles dated February 6, 1950?

A. If I can look at the letter and see the wording I can tell you if it is my wording or possibly Mr. Simon's.

(Document handed to the witness.)

Q. This is Plaintiff's Exhibit 6-A. [1596]

A. No. I may have dictated this, written this letter with the help of my associates in Detroit, who

(Testimony of Alex Schreiber.)

is an attorney, or my son-in-law in Detroit, who is an attorney.

Q. But Mr. Simon didn't help you in connection with that letter?

A. He may have and he may not have. I don't remember.

Mr. Mitchell: Let me have the transcript.

Mr. Corinblit: There is no quarrel about it, Mr. Mitchell.

Mr. Mitchell: You mean he is wrong about it?

Mr. Corinblit: You took his deposition, 1,500 pages worth, and his answer was that Mr. Simon helped him draft the letter. There is no question about that.

The Court: Will you stipulate to that?

Mr. Corinblit: Certainly, your Honor. No question about that. There is no problem there.

Mr. Westbrook: And Mr. Simon testified that he drafted the letter.

Mr. Corinblit: And we read that into the record.

Q. (By Mr. Mitchell): Now, Mr. Schreiber, Mr. Simon told you to prepare a memorandum of all meetings with the distributors, didn't he?

A. He did.

Q. And this was in preparation for this lawsuit, wasn't it? [1597]

A. No. *it* never thought of a lawsuit.

Q. He also wrote the letter dated April 17, 1950, in which a demand was made for first run Los Angeles. What is that exhibit number?

Mr. Westbrook: 6-H, Plaintiff's 6-H.

(Testimony of Alex Schreiber.)

Mr. Corinblit: It was written by Seymour Simon and we will stipulate that Mr. Simon sent the letter that he signed.

The Witness: Yes. This wasn't my letter. This was Mr. Simon's letter.

Q. (By Mr. Mitchell): And he accompanied you to New York for these meetings with the distributors.

A. He did.

Q. Right?

A. Yes, sir.

Q. And then you wrote a letter dated August 22, 1950, complaining about the requirement of bidding which is Plaintiff's Exhibit 6-M.

(Document handed to the witness.)

Q. And Mr. Simon helped you prepare that, didn't he?

Mr. Corinblit: We will so stipulate.

Mr. Mitchell: Very well. It isn't necessary to answer the question. Counsel so stipulated.

The Witness: All right.

Q. (By Mr. Mitchell): Columbia and RKO gave you a seven-day run without bidding, didn't they? [1598]

Mr. Corinblit: When was that, counsel?

The Witness: I was just going to ask that.

Q. (By Mr. Mitchell): Did they give you a seven-day run without bidding prior to the filing of this lawsuit?

A. Prior to the filing of the lawsuit?

Q. Yes.

A. Yes.

Q. And Warners, Universal, Paramount and

(Testimony of Alex Schreiber.)

Loew's would not give you a seven-day run without bidding, right? A. I believe that is right.

Q. So you sued the last four corporations and you did not sue Columbia or RKO, right?

Mr. Corinblit: I object to this question. It is a matter of record as to who the defendants are in this case and who they are not.

The Court: Overruled.

The Witness: Yes, we also sued Fox West Coast Theatres.

Q. (By Mr. Mitchell): I understand that. You testified with respect to your meeting of March 30th in Mr. Hickey's office where you went to see if you get Loew's product.

He told you that Loew's would not license you first run Los Angeles, didn't he?

A. That is right.

Q. He told you that Loew's wanted to license its pictures one run on Hollywood Boulevard and one run downtown, [1599] isn't that right?

A. I believe he told me that is the way they were releasing their pictures at that time.

Q. And that Loew's wasn't going to license to you or to any other suburban city or to a theatre in any other suburban city—that they were going to have two showcase runs, is that right?

A. I believe that is right.

Q. They also told you that if they should start licensing to the Paradise they would be confronted with demands for first run from all of these surrounding cities like Huntington Park, Pasadena,

(Testimony of Alex Schreiber.)

Glendale, San Fernando Valley, Westwood, and so on. Didn't they tell you that?

A. That is what he told me.

Q. And they just weren't going to do it.

A. That is what he said.

Q. In testifying with respect to the refreshing of your recollection from a memorandum, I think you didn't make quite clear what I believe you meant to say.

Mr. Hickey told you that he would like to see Loew's take back the Loew's Theatre downtown and use that for an exclusive first run of Metro product. Do you remember saying that?

A. He said he would like that personally and also——

Q. All right. And then he said following that exclusive [1600] first run he would like to sell 14 or 15 of the larger theatres on a day-and-date run, isn't that right?

A. Yes, that is right.

Q. That is what he said?

A. Yes, but continue it, please.

Q. Well, please, let me conduct the examination.

Now, with respect to Inglewood Mr. Hickey told you that he would make Loew's product available to you on a seven-day run if you would bid for the pictures against the La Tijera, the United Artists, the Fox and the Academy Theatre. Is that right?

A. I don't know whether it was all those theatres. I believe it was the Inglewood Theatres and La Tijera. He may have mentioned them individually. I don't remember at this time.

(Testimony of Alex Schreiber.)

Q. There was no mention of bidding against the Southside, the Rio, the Imperial or the Centinela or Century Drive-Ins, was there?

A. Not the Century and the Centinela. At that time they were not playing seven-day pictures, but I believe he said all theatres in Inglewood and Southside, Imperial, Rio.

Q. Then did you understand him to say that Loew's would require you to bid against the Southside and Imperial in Inglewood? A. I did.

Q. As a matter of fact, they didn't require you to do so.

A. I understood him to require us to bid.

Q. No, just listen to my question. As a matter of fact, when you got your theatre opened they did not require you to bid against Southside, Rio or Imperial, did they?

Mr. Corinblit: You are talking about Loew's?

Mr. Mitchell: Loew's.

The Witness: I don't know without referring to my memorandum.

Q. (By Mr. Mitchell): It has nothing to do with your memorandum. I am asking you what happened commencing August 23, 1950. Loew's sent you requests for offers, didn't they, or do you know anything about it?

A. Yes, but I believe the Southside was included in there.

Q. Probably your counsel will stipulate otherwise, but we will straighten it out. I think there is

(Testimony of Alex Schreiber.)

a letter which we can show you to refresh your recollection.

A. Mr. Mitchell, this letter says that—requesting us to bid against the Academy. Southside isn't mentioned in here.

Q. Maybe that is the letter we are looking for. You tell me the ones that you were to bid against on Loew's product.

A. (No response.) [1602]

Mr. Mitchell: Those aren't the ones.

Q. Loew's was serving, as a matter of fact, the Southside on that 21 day availability, do you remember that? A. No, I do not.

Q. I will show you an original letter on the letterhead of Metro-Goldwyn-Mayer from Thomas J. Aspell, Jr., to Mr. Marco Wolff, with a copy to Mr. Alex Schreiber, and ask you to state whether you recognize that letter.

The Court: May we identify the letter?

Mr. Mitchell: It is a letter dated September 9, 1950.

The Court: I mean by the identification number.

Mr. Mitchell: It is defendant Loew's D-7 for identification.

Mr. Corinblit: Before you answer, Mr. Schreiber, I would like to take a look at the letter, but go ahead and read it.

Mr. Mitchell: Here is a copy (handing document to Mr. Corinblit).

You will agree, Mr. Corinblit, that letter was sent and received?

(Testimony of Alex Schreiber.)

Mr. Corinblit: Yes.

Mr. Mitchell: I will offer it in evidence.

The Court: It may be received in evidence.

The Clerk: Loew's Exhibit D-7. [1603]

(The exhibit referred to was received in evidence and marked as Defendant Loew's Exhibit D-7.)

The Witness: Yes, I believe I remember that letter. [1604]

* * * * *

Q. (By Mr. Mitchell): Does that refresh your recollection that Loew's required you to bid only against those named theatres? A. Yes, sir.

Q. And not against the Southside, the Rio or Imperial? A. That's right.

Q. And at some point during these discussions you had with Mr. Hickey, you told him you wouldn't bid?

A. I told him I wouldn't bid against theatres that were not in substantial competition with us, and I didn't want to bid against theatres when they were negotiating with the theatres that they claimed were bidding. They were not bidding. Prior to the opening of the Paradise Theatre, they were negotiating for pictures. They had a deal in Inglewood and——

Mr. Mitchell: Now, the conclusion of the witness that they had a deal in Inglewood——

The Court: It may go out.

Q. (By Mr. Mitchell): Your counsel will argue the case for you, Mr. Schreiber. If you will just

(Testimony of Alex Schreiber.)

give us a chance, we will get along all right on the argument.

The fact is that Loew's sent you requests for bids all during the year 1950 after you opened, isn't that right?

A. I don't remember the period, Mr. Mitchell, but they did send us letters for bids.

Q. Requesting you to bid?

A. Yes, sir. [1605]

Q. You just wouldn't bid?

The Court: With a very few exceptions. There was some bidding, wasn't there? It may not have been with Loew's, but there were some.

Mr. Mitchell: I can tell you, your Honor.

The Court: There were a few pictures on which there were bids.

Mr. Mitchell: Yes, there were some pictures that Marco bid for from Loew's.

Q. Did Marco bid with your permission?

A. I left the buying and booking of pictures to Mr. Wolff. Whatever he saw proper to secure pictures for the Paradise Theatre while he was booking and buying was strictly his own doing. We followed his recommendation, and whatever he did we approved.

Q. You were personally opposed to the Paradise Theatre bidding for Loew's pictures?

A. I was opposed to bidding in the Paradise Theatre with theatres that were not in substantial competition with us.

Q. And you considered that none of these thea-

(Testimony of Alex Schreiber.)

tres was in substantial competition with you, is that the idea?

A. Except the Loyola Theatre, yes, sir.

Q. They weren't requiring you to bid against the Loyola. I am talking about the La Tijera, the United Artists, the [1606] Academy, the Fifth Avenue and the Fox. A. That's right.

Q. Those theatres you considered were not in substantial competition with you?

A. That is correct.

The Court: Now, just a minute. May I ask this witness a question? You said you didn't bid because the theatres were not in substantial competition.

The Witness: That's right.

The Court: Did you determine whether or not the theatres were in substantial competition or not in substantial competition before the Paradise Theatre was built?

The Witness: Yes.

The Court: Then all you did was to go down and locate a site for your theatre and then come to the conclusion that if a theatre was built on that site, it wouldn't be in substantial competition with these other theatres?

The Witness: That's right. We figured we were not going to be in competition with any other theatre. We were going to be in just Westchester and we had enough business in Westchester to support a \$450,000 investment.

The Court: You came to that conclusion without making any survey, except talking to the service

(Testimony of Alex Schreiber.)

station operator and the drug store man, and the people up and down the business section of Westchester? [1607]

The Witness: Yes, where they attend theatres, and went to the schools and inquired, and circled up and down all the side streets, looked over the houses, et cetera.

The Court: Somewhere in the evidence that has been introduced was a letter that was written either by you or Mr. Simon in which you asked the distributors to show you why they thought that the theatres in Inglewood were in substantial competition, and you said it shouldn't be a guess or a conjecture, that you should have the facts.

What facts did you have other than a guess or conjecture before you built your theatre, that it was not going to be in substantial competition?

The Witness: If we thought — answering that question, your Honor——

The Court: Do you remember the number of the exhibit of that letter? What is the exhibit number?

Mr. Corinblit: I think you have it in front of you, Mr. Schreiber. That is the letter of August 22, 1950.

Mr. Mitchell: That is the one Mr. Simon wrote for him.

The Court: Let me see it.

(Witness handing document to the court.)

The Court: You say here: "You cannot make a determination as to whether two theatres are or are not in substantial competition on the basis of guess

(Testimony of Alex Schreiber.)

or hunch. We [1608] therefore want to know what facts and figures you have to support the conclusions of your Los Angeles exchange manager that the Paradise and the Academy were in substantial competition, and we want the opportunity to examine these facts and figures.”

This was written August 22, 1950.

You mean to say that before the Paradise Theatre was built you determined that there would be no substantial competition between the Paradise Theatre and theatres in Inglewood?

The Witness: Your Honor, the theatre was built and ready to open on the 22nd. We opened on August 23rd.

The Court: Just listen to my question. I said before the theatre was built you determined in your own mind that there was no substantial competition between the theatre to be built and the theatres in Inglewood?

The Witness: That's right.

The Court: Now, other than any guess or hunch that you had as to whether there was no substantial competition, will you tell me what facts and figures you had to support your conclusions?

The Witness: Yes, sir. I will be glad to.

The Court: All right. What were they?

The Witness: I investigated the entire Westchester area before we bought the property and before we went to an [1609] expense and obligation of \$445,000 or \$450,000.

The Court: I am just interested in what you did.

(Testimony of Alex Schreiber.)

You testified on direct examination you talked to a service station man, you talked to a man from the drug store, you talked to people in the business district, and this business district occupied only three blocks long and one block wide.

The Witness: That's right.

The Court: What else did you do?

The Witness: At the schools, I went around the schools.

The Court: Yes, I know.

The Witness: I circled up and down all the streets, north of Manchester, south of Manchester, east of Sepulveda, west of Sepulveda, that entire area. Then I used my 30 some odd years of show business, and thank goodness I was successful during that 30 years, and I used all that experience to make my decision. When we went to the distributors in——

The Court: That's all right. That is what you base your conclusion on?

The Witness: That's right.

The Court: That the Paradise Theatre was not going to be in substantial competition with the Inglewood theatres.

The Witness: Plus the fact that we were willing to play day and date without—— [1610]

The Court: Now, just answer the question. That is all I want to know.

You asked the distributors to do certain things. You wanted to know what facts they had and I was just interested in what facts you had.

(Testimony of Alex Schreiber.)

The Witness: Thank you.

Q. (By Mr. Mitchell): Mr. Schreiber, you knew that Loew's was only going to license one 7-day run in that area, didn't you?

A. I knew they were going to——

Q. They told you they were only going to license one 7-day run in the southwest Los Angeles area?

A. They told me that in February, March or April, I believe it was, yes, when our theatre was under construction.

Q. And you recognized the right a moment ago of the distributors to decide how many runs they were going to offer in a given area?

A. That is right.

Q. So Loew's, you recognize, has the right to say they are going to have one? A. Yes.

Q. Now, in order to get that run there are going to be a number of theatres down in that area that would like to play seven days—that is an advantageous run, isn't it? [1611]

A. That is right.

Q. And the La Tijera would like to play it?

A. That is right.

Q. And so would the Academy?

A. Yes, sir.

Q. Or the Fox and the United Artists and the Fifth Avenue? A. That is right.

Q. And so did you? A. That is right.

Q. You wanted to play it?

A. That is right.

Q. So with all of those theatres wanting to play

(Testimony of Alex Schreiber.)

it and there being just one run they are all going to have to compete with each other, aren't they, for the run?

A. Not necessarily. They don't have to compete.

Q. Well, if they want to get it, there is only one way to get it and that is to compete with each other, isn't it?

A. Not necessarily.

The Court: How can they get it without competition?

The Witness: Metro can give it to the United Artists theatre and say, "That is the theatre I want to serve." That is what Mr. Mitchell asked me, if they have a right to sell the picture and designate the theatre.

The Court: Assuming you are the manufacturer of an [1612] article and you wanted a distributor in a city like Pasadena, for instance, as the manufacturer of that article you have a right to go to Pasadena and pick out the ABC store and say, "I am going to give to the ABC store the exclusive right to sell this merchandise in Pasadena."

Do you think you would have a right to do that?

The Witness: I imagine that manufacturers would have the right to give that merchant exclusive right on the article.

The Court: Supposing a manufacturer was a motion picture company and they manufactured a motion picture and went over to Pasadena and said, "Here is one theatre we are going to give the exclusive right in this community to show our product." Isn't that perfectly all right?

(Testimony of Alex Schreiber.)

The Witness: I don't know. [1613]

* * * * *

Q. (By Mr. Mitchell): Now, Mr. Schreiber, talking about first run Los Angeles, if a distributor licenses only one run, one run in the Los Angeles metropolitan area, the theatre playing that one run will attract customers from all parts of the Los Angeles metropolitan area, won't it?

A. It will.

Q. That means—let's take as an example The King And I, which is now playing exclusively in the Chinese. You [1628] are aware of that.

A. It is playing there now, yes, sir.

Q. That theatre will attract customers from Pasadena, won't it?

A. I imagine it will, yes.

Q. And from Inglewood? A. Yes.

Q. And from Westchester? A. Yes.

Q. And from Huntington Park? A. Yes.

Q. And from Westwood? A. Yes.

Q. Glendale? A. Yes.

Q. San Fernando Valley? A. Yes.

Q. You will agree, won't you, that Cinerama, which ran for how long—it ran for a couple of years, didn't it, in the Warner's Theatre?

A. Yes. It is still running.

Q. Cinerama Holiday is there now, isn't it?

A. Oh, yes, that's right.

Q. The original Cinerama ran a very long time. I forget, but it was a couple of years, wasn't it?

A. I believe it was around two years, yes.

(Testimony of Alex Schreiber.)

Q. That was the only theatre in Southern California playing that picture.

A. That is correct, because there is a reason.

Q. Whatever the reason may be, the owners of Cinerama played Cinerama in just one theatre. It takes a lot of equipment to play it.

A. That is what I wanted to say.

Q. I will agree with you it takes a lot of equipment to play it, but they played it in only one theatre.

A. Yes.

Q. And it drew people from all over Southern California.

A. Yes. But, Mr. Mitchell, it can't play in any other theatre in Southern California.

Q. All right, but playing in just the Warner's Theatre, it drew people from way out as far as San Bernardino and other outlying points, isn't that right?

A. Yes, sir.

Q. We have already talked about how The King And I draws customers from the entire metropolitan area. That means, that the operator of a theatre having a single run can charge high admission prices, can't he, higher than if there were a whole lot of theatres playing?

Mr. Corinblit: Your Honor, I will object to that [1630] because it calls for a conclusion and speculation.

Mr. Mitchell: It undoubtedly calls for a conclusion.

Mr. Corinblit: No foundation.

The Court: This man has 30 years' experience.

(Testimony of Alex Schreiber.)

He should know. Of course, the testimony so far is that one of the reasons for having an exclusive is because they can get higher prices. Of course, it costs more money to put it on, but they pass that on to the customer and the customer pays higher prices. That is already in evidence.

If this witness doesn't know—well, I think he does.

You know, don't you?

The Witness: I sure do.

Q. (By Mr. Mitchell): It is a fact he can charge higher prices, isn't it?

A. It is a fact Cinerama and Oklahoma are running at higher admission prices in those two theatres, and there are no other theatres in Southern California that can run them even if they want to run them for 50 cents. They can't run them because those two theatres were especially equipped with \$50,000 to maybe \$85,000 worth of equipment for each one of those theatres. Those are the only places those pictures can play.

Q. I know.

A. They can't play at the Loyola and they can't play [1631] at the Paradise.

Q. All right.

A. They are not regular pictures.

Q. But let's talk about The King And I. The King And I, you can play The King And I in the Paradise in due course if you pay enough money to get it, right?

A. Yes, we can, if we can get it.

(Testimony of Alex Schreiber.)

Q. If you pay enough, you can get it?

A. That's a question.

Q. All right. Let's take pictures like *The King And I* or *Shane* or any of these other pictures that have played single runs. They draw from this large area.

Mr. Corinblit: Your Honor, I object to this question for the very simple reason that we are covering a period in this case roughly of 1950 and 1951. If your Honor will examine the play-off in evidence on this point, you will find that pictures went in and out like a machine. During this period you do not have this kind of exclusive runs ordinarily, and while I realize we have expanded the period for some purposes, it does not represent on this fact the kind of a question that is material here. I will object on that ground.

The Court: Mr. Mitchell has a wide grin on his face.

Mr. Corinblit: Yes.

The Court: You are objecting to something you have [1632] already done. You have expanded this period.

Mr. Corinblit: Yes, sir, I have.

The Court: For certain specific reasons.

Mr. Corinblit: That's right.

The Court: Here is another reason. Mr. Mitchell has a reason he wants to expand it.

Mr. Corinblit: If we can have it established that this long run policy is something that recently occurred in general——

(Testimony of Alex Schreiber.)

Mr. Mitchell: We can't have it established because it is contrary to the fact.

The Court: Objection overruled.

Go ahead, Mr. Mitchell, I have overruled the objection.

Q. (By Mr. Mitchell): Let's go to your time. Let's talk about King Solomon's Mine. That played two theatres, didn't it?

A. I don't remember, but I would presume it would. It was a big picture.

Q. Loew's State and Egyptian?

A. I believe it did.

Q. Playing those two theatres and not playing any place else day and date, they drew patronage from all of the Los Angeles metropolitan area, right?

A. They would draw from all areas, yes, sir.

The Court: Mr. Mitchell, you are just overlooking the classic example. I don't know how you have overlooked it. Nobody has mentioned *Gone With The Wind* in this case.

The Witness: That is too new. You should take *The Birth of a Nation*.

The Court: The fact of the matter is *Gone With The Wind* has never played at popular prices, has it?

The Witness: Oh, yes.

The Court: To this day.

The Witness: Oh, yes.

Mr. Westbrook: It didn't for many years, your Honor.

(Testimony of Alex Schreiber.)

The Witness: We played it in Minneapolis at popular prices.

Q. (By Mr. Mitchell): You will admit that if theatres downtown and on Hollywood Boulevard are playing exclusive first runs, people from Westchester are going to go downtown, some people are going to go downtown to see that picture?

A. Very few, yes, sir.

Q. Those that are in a hurry to see it will go downtown, won't they?

A. Yes, sir, or Hollywood.

Q. Or Hollywood, yes. Perhaps to Hollywood.

A. Yes.

Q. Let's take the first subsequent run, which is what [1634] we call the 7 day run. Sunset Boulevard was a picture released during this period. Do you remember Sunset Boulevard? A. I do.

Q. That was a picture produced by Paramount.

A. It was.

Q. And it starred Gloria Swanson in a big comeback of Miss Swanson's? A. That's right.

Q. And it was itself, I guess it was a runner-up in the Academy Awards, wasn't it, and it received many Academy Awards for various features in the picture?

A. It did. We have the picture up in our Academy Award Court.

Q. It was an outstanding picture, wasn't it?

A. It was.

Q. If Sunset Boulevard were to have been shown in Inglewood on a 7 day availability, and if it were

(Testimony of Alex Schreiber.)

not shown day and date in Westchester, some people in Westchester would not wait for it to be shown there, but would go to Inglewood to see it, wouldn't they?

A. Yes, if they wanted to see the picture, yes, they would.

Q. And on other pictures shown in Inglewood one run on the 7 day availability, those that wanted to see that picture earlier than a later run in Westchester, those people in Westchester [1635] would come in to Inglewood to see it, wouldn't they?

A. If it is a big picture early run, they would draw some people from Westchester to go to Inglewood, yes.

Q. Whether it was a big or little picture, if there were people in Westchester that wanted to see the picture early, they would come to Inglewood?

A. Yes, if they wanted to see the picture. If it was a small picture and they wanted to see it, even if it was a small picture, earlier, they would go to Inglewood, yes, sir.

Q. You think a theatre on a 7 day availability in Westchester could perhaps get a gross of some four to six thousand dollars on a 7 day run, isn't that right? A. Yes, sir.

Q. And on the other hand, on a 21 day run, it could only gross say from \$1800 to \$2400?

A. And even less than that.

Q. And even less? A. That's right.

Q. So there are about \$2,000 to \$4,000 worth of

(Testimony of Alex Schreiber.)

admissions in Westchester that go into Inglewood to see an earlier run, isn't that right?

A. Impossible. Impossible.

Q. I want to show you a document marked Joint Distributors' Exhibit M-1 and ask if you recognize the signature of your son Max Schreiber on the verification of that complaint. [1636]

A. Yes. That is my oldest son's signature.

Q. Is that the boy that was helping you run this theatre?

A. That's right. He is the boy right behind you on your right side.

Q. You commenced a lawsuit against the labor union known as the International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada, commonly known as the IATSE, didn't you?

A. Commonly known as the Operators Union, yes.

Q. The international is known as the IATSE?

A. Yes, sir.

Q. One of the locals of the international is the union to which all motion picture operators belong, right?

A. Not all of them, but the majority of them do.

Q. I didn't know there were any that didn't belong. All right.

This verification by your son says that the facts stated in the complaint are true.

You understand what a verification is?

Mr. Corinblit: Your Honor, there is no founda-

(Testimony of Alex Schreiber.)

tion laid for that. We don't have any showing with respect to relevancy.

The Court: The foundation is all right, but what *is* [1637]

* * * * *

Mr. Mitchell: Since counsel won't agree with me, I want to establish that this is a sworn statement. Perhaps I can read enough of it to show that it is a sworn complaint.

The Court: It is a verified complaint in which the party verifying it states the information contained therein is true. The complaint was filed by the corporation and the party who verified it, I suppose, was an officer of that corporation.

Mr. Corinblit: Yes, that is correct. We will stipulate to those facts. [1640]

Mr. Mitchell: He is the vice president.

Mr. Corinblit: Yes.

Mr. Mitchell: And when you say "verified," your Honor, you mean it is sworn to before a notary public?

The Court: Yes, sworn to before a notary public.

Mr. Mitchell: Now, I am going to read paragraph 2 of the second cause of action, which starts on page 10, and ends on page 11:

"Among the theatres which are competitive to the Paradise Theatre in the exhibition of subsequent run feature motion pictures are:

"Academy Theatre, 3141 West Manchester Boulevard, Inglewood, California. Approximately 1,200 seats.

(Testimony of Alex Schreiber.)

“The Fifth Avenue Theatre, 2541 West Manchester Boulevard, Inglewood, California. Approximately 1,000 seats.

“United Artists Theatre, 148 North Market Street, Inglewood, California, approximately 1,000 seats.

“Fox Inglewood, La Brea Boulevard at Queen Street, Inglewood, California, approximately 1,050 seats.

“Of the aforementioned theatres, the Academy, Fifth Avenue and Fox are operated by Fox West Coast Theatres Corporation, and the United Artists is operated by a subsidiary of United Artists Theatres Circuit, Inc. Prior to 1950, the United Artists Theatres was [1641] operated by a subsidiary of Fox West Coast Theatres Corporation, and until the death of Charles P. Skouras in 1954, the president of the United Artists Theatres Circuit, Inc., George Skouras was the brother of the president of Fox West Coast Theatres Corporation, Charles P. Skouras.”

And the verification reads, “Max Schreiber”——
Is it all right to read this?

The Court: Yes.

Mr. Mitchell: “Max Schreiber being duly sworn, deposes and says: That he is an officer of the Paradise Theatre Building Corporation, the plaintiff in the within and above-entitled action; that he has read the within and foregoing amended complaint for injunction and damages and knows the contents thereof; that the same is true of his own

(Testimony of Alex Schreiber.)

knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

“Affiant is authorized to make this verification for plaintiff on behalf of said corporation.

“Subscribed and sworn to before me this 3rd day of June, 1955,”

and that is signed “Max Schreiber—Subscribed and sworn to before me this 3rd day of June, 1955, Joan Q. Bove, Notary [1642] Public in and for said County and State.”

Mr. Corinblit: Your Honor, if Mr. Mitchell will offer the entire complaint in evidence I will have no objection.

The Court: Well, I only ruled upon that portion that was read. When the time comes you can offer the rest of it.

Mr. Corinblit: All right, sir.

The Court: May I ask this witness a question?

Mr. Mitchell: Certainly.

The Court: Do you have an opinion—do you have a different opinion than your son as to whether or not these theatres are in substantial competition?

The Witness: We have a lot of differences of opinions, whether the theatres are in substantial competition or other matters and these theatres—we are pretty well agreed on which theatres are and which are not.

The Court: Well, now, here is a verification of a complaint in which your son says, as a representa-

(Testimony of Alex Schreiber.)

tive of the corporation, that they are in substantial competition.

Mr. Corinblit: Your Honor, you did not—that is the point. The words are “competitive.” Your Honor, the words are “competitive.” There is no statement with respect to substantial competition. Not a word. Just the words that Mr. Mitchell read. That is why I objected to it, because I didn’t feel it was material. It was just that the theatres are competitive. There is not a word in the complaint as to substantially in competition—substantial competition or the statement——

The Court: All right. You can argue that to the jury.

Mr. Corinblit: There is no quarrel between us on the question. You may have competition between theatres, but the issue is substantial competition. There is no quarrel on either side with that point.

Mr. Mitchell: I would say there is considerable quarrel if they are in competition. If they are in competition, they are in competition and were at that time in 1955. The La Tijera closed——

The Witness: In 1955.

Mr. Mitchell: Yes, the La Tijera was closed.

The Witness: They were closed, yes, sir. [1644]

Q. (By Mr. Mitchell): All right. Now, do you recall that your company requested clearance over the La Tijera Theatre. Do you recall that?

A. I recall in seeing some of the letters that Marco Wolff sent in that he called for clearance on

(Testimony of Alex Schreiber.)

the La Tijera Theatre on a few pictures, maybe three, maybe six, maybe ten. I don't remember, but there were some letters that Marco Wolff put in with clearance because the film companies asked him to make his offer or bid with clearance on the La Tijera Theatre.

Q. You were there and heard the film companies say that, were you? A. I was not there.

Q. You really don't know about that, do you, Mr. Schreiber?

A. I know what Mr. Marco Wolff told me.

Q. All you know is what Marco Wolff told you?

A. Yes. He was our agent. Yes, I asked him why he inserted that and Mr. Marco Wolff told me he was asked to put it in his bid that way.

Q. All right. Now, you are accustomed to doing the things which these film companies ask you to do, is that right?

A. Oh, sometimes you have got to jump through their fingers like that, if you want their pictures.

Q. Well, in these instances you were bidding for the picture, were you not?

A. Marco Wolff?

Q. Yes, Marco Wolff, your company through Marco Wolff was bidding for the pictures?

A. He was bidding on some of the pictures, yes, sir, because that was the only way he could get it or he was making offers.

Q. When you made a bid you, in these instances, in claiming clearance over the La Tijera, you were—that is a statement, isn't it, or a repre-

(Testimony of Alex Schreiber.)

sensation that the La Tijera is in substantial competition with your theatre?

A. On those particular pictures, if Mr. Wolff put in there clearance, yes, sir.

Q. All right. The Paradise Theatre Company acting through Mr. Wolff claimed clearance over the La Tijera, on Paramount picture called Fancy Pants on October 17, 1950. Right?

A. On that picture he did ask for clearance on the La Tijera, yes, sir.

Q. And also on October 24, 1950, on the Paramount picture Union Station Mr. Wolff asked for clearance over the La Tijera Theatre, didn't he?

A. In his letter he did.

Q. And on the Paramount picture Tripoli under date of [1646] December 3, 1950, he asked for clearance over the La Tijera Theatre, is that right?

A. No. My son asked for clearance.

Q. I am sorry. Your son asked for clearance?

A. He did.

The Court: May we have a stipulation as to the distance between the Paradise Theatre and the La Tijera Theatre. You put it on the board this morning when you put the distances on the board, but I don't think you put that distance on the board.

Mr. Westbrook: I believe 2.1 miles according to the stipulation.

Mr. Corinblit: We will stipulate to that.

The Court: Two decimal what?

Mr. Corinblit: 2.1.

Q. (By Mr. Mitchell): All right. And on De-

(Testimony of Alex Schreiber.)

cember 3, 1950, your son on the Paramount picture Copper Canyon asked clearance over the La Tijera Theatre, is that right? A. Yes, sir.

Q. And on the Warner Bros. picture The Breaking Point, Marco Wolff on behalf of your company asked clearance over the La Tijera, isn't that correct?

A. Yes, sir. And he Xed out all of the other theatres in Inglewood.

Q. That is right. That was on—I think the date is [1647] up in the left-hand corner there. It was on September 5, right?

A. That is correct.

Mr. Corinblit: With respect to this document, will you stipulate that Warners sent out those letters with all of the theatres named?

Mr. Mitchell: They sent out the letter that reads like this:

“The maximum clearance to be granted on this run shall be 7 days following Los Angeles first run closing clear of Fox and United Artists-Inglewood, La Tijera, Imperial, Southside, Los Angeles,” and on this particular document that I just asked the witness about, the names of all of those theatres, except La Tijera, are crossed out.

Mr. Corinblit: May I look at it?

Mr. Mitchell: Is that a fact you want me to agree to?

Mr. Corinblit: I don't think you mentioned the Academy at the end of the line. You will find the

(Testimony of Alex Schreiber.)

Academy where it is Xed out. Are you looking at the Breaking Point 7 days?

Mr. Westbrook: I believe the clearance reference to the two companies, United Artists Theatres Circuit and Fox Theatres would cover all their theatres. [1648]

Mr. Corinblit: All right. That is the stipulation.

Mr. Mitchell: That is correct, yes.

The Court: May I ask a question?

Mr. Mitchell: Yes.

The Court: The jury is going to have to draw inferences from some of this testimony. The facts are presented to the jury and the jury is going to draw an inference.

They may draw the same inference as the court draws or they may draw the same inference as counsel draws, or they may disagree. [1649]

Now, is it proper to say that in this particular instance where Paradise asks for clearance over the La Tijera Theatre and crossed out all the other theatres, that in this particular instance Paradise is saying, "We are in competition or substantial competition with La Tijera and we are not in substantial competition with the other theatres?"

Is that a fair inference?

Mr. Corinblit: I don't believe so.

The Court: Why not?

Mr. Corinblit: For this reason, your Honor. I might ask—because you have—you could ask the other question, "When did the distributors license pictures day and date between the La Tijera and

(Testimony of Alex Schreiber.)

the United Artists Theatre”—you could ask the other question, “Did the distributors license day and date between the La Tijera and United Artists Theatre?”

Mr. Mitchell stipulated that happened on occasion and they are only—how far apart are they? A mile or two miles or something like that.

Mr. Westbrook: Just slightly under two miles.

Mr. Corinblit: You could ask the question, “Were the distributors saying there is no substantial competition between Inglewood and La Tijera?” If you ask one of the witnesses on the stand they will—one of the distributor witnesses, they will say there was substantial competition. It didn’t make any difference. They would license these [1650] theatres day and date without regard to substantial competition. As far as they were concerned, when it came to licensing other theatres, they would license them whether they were in substantial competition or not.

The Court: But, as I understand, and I haven’t looked at the exhibit, but as I understand this request was presented to Paradise and Paradise X-ed out the other theatres.

The Court: Only left in the La Tijera.

Mr. Corinblit: That is correct.

The Court: Then is it fair to say that a proper inference is that in this particular instance the only substantial competition was between Paradise and La Tijera? [1651]

Mr. Corinblit: No, sir. I think all you can say

(Testimony of Alex Schreiber.)

from it is in this particular instance the Paradise did not ask for clearance over the other theatres, but did ask for clearance over the La Tijera.

The Court: Mr. Mitchell, we ought to have your impression about the inference to be drawn.

I might say to the jury that you don't have to follow either one of these attorneys. You come to your own conclusion. You draw your own inference.

What inference do you think should be drawn, Mr. Mitchell?

Mr. Mitchell: I infer from it that Mr. Wolff is saying he is in substantial competition with the La Tijera and he isn't saying whether or not he is in substantial competition with the others, but he is saying he doesn't mind if they play day and date. He doesn't want any clearance.

The Court: All right. If that is your interpretation, all right, but this is something for the jury to determine.

Q. (By Mr. Mitchell): Now, on September 22, 1950, on a Warner Bros. picture, Mr. Wolff asked clearance over all of the Inglewood theatres, that is, over the United Artists and the Fox theatres, meaning all of the Fox theatres, we have agreed upon, in Inglewood, that is the Fifth Avenue, the Academy and the theatre called the Fox, and over the La Tijera, [1652] Imperial, and Southside in Los Angeles, isn't that right?

Mr. Corinblit: Before you answer, Mr. Schrei-

(Testimony of Alex Schreiber.)

ber, I haven't seen this document, that is, I haven't seen it right now.

Mr. Westbrook: You have looked at it, counsel. You haven't seen it right now. (Handing document to Mr. Corinblit.)

Mr. Corinblit: All right. Now you can answer the question.

The Witness: Clearance in this contract, Three Secrets, calls for clearance——

Mr. Corinblit: Just a minute. May I take a look at that once more, please?

The Witness: Yes.

Mr. Corinblit: Do you have the original of this, counsel?

Mr. Westbrook: We may very well, but you can see Mr. Wolff's signature through the carbon.

Mr. Corinblit: I can see the signatures to the carbon, but there is a quarrel about whether there was any X'ing out that has come through. There is some question about X'ing out here.

The Witness: This is not an approved contract. This is only an application.

Q. (By Mr. Mitchell): That's right. On this application he asked clearance over the Fox Theatres in Inglewood, the United Artists Theatre, the La Tijera, Imperial, and Southside in Los Angeles, isn't that right?

A. No. Mr. Wolff didn't ask for clearance over the theatres you have just mentioned.

Mr. Mitchell: I will offer the document in evidence.

(Testimony of Alex Schreiber.)

The Witness: This is application.

Mr. Corinblit: Your Honor, we will have, one of these days, Mr. Wolff to explain this.

The Court: It may be received in evidence. What is the designation?

Mr. Mitchell: The designation is "Competitive Bid Application." Actually, the date it is executed is September 29, 1950.

The Court: Has it been marked for identification?

Mr. Westbrook: It has been marked Plaintiff's Exhibit 10-J.

The Clerk: It is already in evidence, your Honor. [1654]

The Court: Already in evidence. All right.

* * * * *

Mr. Mitchell: Yesterday, we had introduced Defendants' Exhibit 10-J. I guess it is Plaintiff's 10-J, which is the bid made by Marco Wolff on September 29, 1950, to Warner Bros. for Three Secrets and there was some question raised about the original.

We have here a photostatic copy of the original, which is the same as Plaintiff's Exhibit 10-J, except that it bears on it the stamp "Rejected," which we will offer in evidence. [1660] Perhaps it can be made a part of Exhibit 10-J or possibly we can have a stipulation, but, at any rate, we are producing the original.

Mr. Corinblit: I think it should be a separate exhibit.

(Testimony of Alex Schreiber.)

The Court: In evidence.

The Clerk: Warner's Exhibit H-2.

(The document referred to was received in evidence and marked as Warner's Exhibit H-2.)

* * * * *

Mr. Corinblit: Counsel, in order to make it clear I take it it is our stipulation that this document was sent to Mr. Wolff with those entries on it and was returned to the Warner files and nothing was stricken out. That is what we are talking about here, is that correct? [1661]

Mr. Mitchell: That is what he did, yes. He sent it in with nothing stricken out.

Mr. Corinblit: All right.

Q. (By Mr. Mitchell): Now, on the Warner picture Rocky Mountain under date of October 5, 1950, Mr. Wolff struck out all of the clearance requests, except La Tijera, leaving a request of Paradise for clearance over the La Tijera on the seven-day availability.

A. That is correct, but all the other theatres, I believe you mentioned, were X'ed out.

Q. That is right, requesting clearance over the La Tijera. A. That is correct.

Q. Which is a theatre you thought was not in substantial competition with the Paradise.

A. That is still my opinion.

Q. Right? A. Yes.

Q. Now, on the Warner picture Glass Menagerie on October 19, 1950, Mr. Wolff for the Paradise

(Testimony of Alex Schreiber.)

Theatre claimed clearance over the La Tijera on the seven-day availability, right?

A. That is correct. The rest are all X'ed out.

Mr. Corinblit: I think we should have these exhibits [1662] in evidence, counsel. Are you offering them in evidence?

Mr. Mitchell: I wasn't, but I am perfectly willing that they be in evidence. When I get through I will be glad to put them all in.

I thought you didn't want to stipulate to them going in, but I will do it your way.

Mr. Corinblit: I haven't had any trouble in stipulating to that.

Mr. Mitchell: When I get through I will offer the whole bunch.

Q. (By Mr. Mitchell): The Warner picture Break Through on November 1, 1950, Mr. Wolff on behalf of the Paradise claimed clearance over the La Tijera.

A. Yes. The rest of the theatres are all X'ed out. [1663]

Q. On the Universal picture Desert Hawk, on August 18, 1950, Mr. Wolff claimed clearance over the La Tijera, right?

A. On that picture, Mr. Mitchell, Marco Wolff's letter asks for just playing time ahead of the Loyola and La Tijera Theatres only.

Q. We have used this word clearance rather loosely here, Mr. Schreiber. You understand that clearance is an agreement between the prior exhibitor and the distributor that the distributor will have

(Testimony of Alex Schreiber.)

an elapse of time before the next exhibitor can show it. Do you understand that?

A. Not exactly the way you explained it.

Q. I see. You understand a prior availability is a situation where the arrangement is that the prior exhibitor shall play the picture and it shall not become available until the next availability, the next run, without necessarily any elapse of time; understand that?

A. Well, I am trying to understand it. The way you are explaining it, if you don't mind, could I explain it my way?

Q. No. I would like to ask the questions instead of you trying to argue with me.

A. All right.

Q. If you don't mind.

A. Then I will tell you I don't understand it the way you asked me.

Q. All right. [1664]

A. Would you ask it a little different?

Q. All right. We are talking about the Paradise and the La Tijera. If the Paradise gets a picture on a 7 day run and wants a priority of run over the La Tijera, that means that the La Tijera shall not play the picture during the 7 day run, but may play the picture on a 14 day run? A. Yes.

Q. That's right, isn't it, that is priority of availability?

A. That is what we call in our business a 7 day—no, that is the following day. That is no clearance.

(Testimony of Alex Schreiber.)

Q. That is no clearance?

A. No clearance. That is just playing time clearance only.

Q. That is playing priority of availability, isn't it?

A. That's right, but there is clearance where there is a 7 day clearance after the last playing day of the prior theatre that is running the picture, and there is also a 14 day and a 21 day and there is a six months.

Q. I am sure there is no disagreement between you and me. A. Fine.

Q. We will try to talk the same language on this. A. Fine.

Q. I want to be sure you understand what I am saying. [1665] So that if the Paradise wins a bid on a 7 day availability and the distributor is selling a 14 day availability, then the Paradise will probably play the picture 7 days, and if the La Tijera buys a 14 day availability immediately following 7 days, without any elapse of time, to-wit, 14 days after the close downtown Los Angeles, he will start playing?

A. That's right, but there will be no clearance.

Q. No clearance.

A. Except playing time clearance only.

Q. Well, there would be no—let's leave the word clearance out of the matter. There would be no elapse of time between the close of the Paradise run and the start of the La Tijera run?

Mr. Corinblit: Just a minute.

(Testimony of Alex Schreiber.)

Mr. Mitchell: Let the witness answer without telling him how to answer.

The Witness: He doesn't have to tell me how to answer. I know the answer.

Mr. Corinblit: It is self-evident if one closes on the 7 and one opens on the 14, there is no elapse of time.

Mr. Mitchell: All right. Now he has told you, Mr. Schreiber.

The Witness: I stated that there is playing time clearance only, but there was no clearance time between.

Mr. Mitchell: Don't try to follow Mr. Corinblit. You just answer my questions. [1666]

Mr. Corinblit: Now, Mr. Mitchell.

Q. (By Mr. Mitchell): Let's start again. Let's suppose the distributor is licensing a 7 day availability and a 14 day availability in the Inglewood-Westchester area. A. Or any area.

Q. Or any area for that matter, yes. Nothing particularly is implied there. But just to visualize it, we will talk about that area. A. Fine.

Q. That means that the 7 day availability starts 7 days after close of downtown Los Angeles or Hollywood, or 7 days after close of first run.

A. That's what it means.

Q. That's what it means?

A. But it wasn't used all the time.

Q. But we are talking about what it means. Let's not try to get confused. The 14 days means 14 days after close of first run?

(Testimony of Alex Schreiber.)

A. That is correct.

Q. All right. If the 7 day run goes to the Paradise and you play it for 7 days, and then the La Tijera has bought the 14 day run, it can on the 8th day start playing the 14 day run.

A. That is correct.

Q. And there is no elapse of time between the two. [1667]

A. That is correct.

Q. And you call that priority of availability, don't you?

A. You call it 7 day availability and a 14 day availability. If you want to use any other words, it's all right with me, Mr. Mitchell.

Q. You have heard the expression that under that situation the Paradise would have priority of availability?

A. Yes, if they bought the picture on 7 day availability.

Q. All right. So far so good. Now, let's suppose that the distributor is licensing a 7 day run in the Inglewood-Westchester area and then isn't licensing any 14 day run, but is licensing 21 day run. Let's suppose the Paradise buys the 7 day run, and that the distributor says to the Paradise, either in writing or by some oral arrangement, "We will not allow any other theatre in the Inglewood-Westchester area to play this picture until 7 days after close of the Paradise," that would be clearance, wouldn't it?

A. That would be 7 day clearance, that's right.

(Testimony of Alex Schreiber.)

Q. All right. So clearance is the elapse of time by agreement? A. That's right.

Q. All right. I am sure we understand each other.

A. Would you want to—all right, go ahead.

Q. Thank you.

Mr. Corinblit: Do you want to hear the full story from the witness?

The Witness: Yes. I want to make sure we understand one another, the purpose of that 7 days in there, Mr. Mitchell.

Q. (By Mr. Mitchell): All right. On Desert Hawk, the Universal picture Desert Hawk, what Marco Wolff asked for there was prior of availability, wasn't it? A. Yes.

Q. All right. Over the La Tijera Theatre.

A. And the Loyola.

Q. All right, and the Loyola.

A. And, Mr. Mitchell, may I make a comment, that the Desert——

Q. I think you have answered the question now. I am sure you have a lot of things you would want to say to me, and we can do that another time. You just answer my questions now and we will get through this case some time this summer.

Mr. Corinblit: Mr. Mitchell wasn't so anxious when his witnesses were on the stand to stop them from making a full explanation.

The Court: No argument now. I am inclined to be sympathetic with Mr. Mitchell. I would like to get through this case pretty soon. [1669]

(Testimony of Alex Schreiber.)

Q. (By Mr. Mitchell): On the Universal picture *Shakedown*, on September 26, 1950, Mr. Wolff on behalf of the Paradise requested clearance over the La Tijera? A. That is correct.

Q. On a 7 day run. A. That's right.

Q. On the Universal picture *Woman On The Run*, on the 7 day run, under date of October 30, 1950, Mr. Wolff asked clearance over the La Tijera, correct? A. Only.

Q. Only. When I don't mention somebody else, I mean only. A. Okay. [1670]

Q. On the Universal picture *Woman On The Run* under date of November 7, 1950—

Mr. Westbrook: Deported.

Mr. Mitchell: I am sorry. This is *Woman On The Run*.

Q. I am speaking of on November 7, 1950—that is a 14-day availability picture. I am sorry.

Universal was offering in the Inglewood-Westchester area both a 7-day availability or really from time to time two 7-day availabilities and one or more 14-day availability, isn't that right?

A. I believe they were offering that.

Q. Then also a 21-day availability?

A. I believe that is correct, Mr. Mitchell.

Q. And that same thing was true of Paramount. Paramount was offering two 7-day availabilities and two 14-day availabilities?

A. That is correct.

Q. And no restricted number of 21-day availability? A. (No answer.)

(Testimony of Alex Schreiber.)

Q. Or do you remember?

A. I think they—I think they only had one 21-day availability. I am not positive.

Q. All right. And in respect to Warner Bros., they were offering either one, two, three and even one four 7-day availabilities and were also offering 14-day availability? [1671]

A. They started out with one but over a period of maybe a year's time or eight months' time they started off with three prints after six or eight months, after our theatre opened, and I think there was one picture they gave four 7-day runs.

Q. And then they also offered 14-day runs?

A. Oh, yes.

Q. Now, on the picture *Deported* on a 7-day run, the Universal picture, under date of November 7, 1950, Mr. Wolff on behalf of the La Tijera claimed, on behalf of the Paradise, claimed clearance over the La Tijera, is that right?

A. That is correct.

Q. On the Universal picture *Kansas Raiders* on a 7-day availability under date of November 15, 1950, Mr. Wolff claimed clearance over the La Tijera, correct? A. That is correct.

Q. On the Loew's or Metro-Goldwyn-Mayer picture *The Next Voice You Hear*, on a 7-day availability, Mr. Wolff claimed clearance over the La Tijera. Correct?

A. That is correct, but he has another statement in there which would practically mean the same thing.

(Testimony of Alex Schreiber.)

Q. Well, that is correct, isn't it? There isn't any qualification to that? A. That is correct.

Q. That is a bid on a Metro picture?

A. That is correct.

Q. On the Metro picture King Solomon's Mines under date of November 7, 1950, Mr. Wolff on behalf of Paradise Theatre claimed clearance over the La Tijera. Right?

A. I am reading the letter, Mr. Mitchell. That is correct.

Q. Where he uses the word "clearance" in these bids, Mr. Schreiber, without specifying any number of days, doesn't that word "clearance" as used there mean to play immediately following the La Tijera—the La Tijera is to be permitted to play immediately following the Paradise if you won the bid?

A. Yes. This interpretation would be that the La Tijera could play the very next day.

Q. What we are talking about—what we were talking about a moment ago is priority of availability? A. That is right.

Q. On the Metro picture The Miniver Story under date of October 30, 1950, Mr. Wolff on behalf of the Paradise claimed clearance over the La Tijera? A. That is correct.

Q. On the RKO picture Treasure Island, under date of August 18, 1950, Mr. Wolff claimed the right to play ahead of the La Tijera, correct?

A. And Loyola, and that particular picture was on a 14-day availability.

Q. You are correct.

(Testimony of Alex Schreiber.)

Mr. Mitchell: In the introduction of these, so as to avoid any confusion that I have now caused here by talking about a 14-day availability, we will leave that one out unless you want it in particularly.

Mr. Corinblit: No, you can leave it out.

Mr. Mitchell: Q. The RKO picture *Edge of Doom* on a 7-day availability, Mr. Wolff on behalf of the Paradise claimed clearance over the La Tijera? A. That is correct.

Q. On the Columbia picture *The Last of the Buccaneers* and *Between Midnight and Dawn*, under date of November 10, 1950, Mr. Wolff on behalf of the Paradise claimed clearance over the La Tijera. Correct? A. That is correct.

Q. On the Columbia picture *Between Midnight and Dawn* on the 7-day availability under date of November 6, 1950, Mr. Wolff acting on behalf of the Paradise Theatre claimed clearance over the La Tijera. Correct? A. That is correct.

Q. On the Columbia picture *Harriett Craig*, on the 7-day availability under date of December 3, 1950, your son on behalf of the Paradise Theatre claimed clearance over [1674] the La Tijera. Correct? A. That is correct.

Mr. Mitchell: Now, counsel has requested that these be offered in evidence.

Mr. Corinblit: We will be glad to have them go in as plaintiff's exhibits.

Mr. Mitchell: I think most of them, if not all of them, are marked Plaintiff's exhibits, so we can put

(Testimony of Alex Schreiber.)

them in with the identification numbers, if that is satisfactory.

Mr. Corinblit: We can put them in as they are marked as plaintiff's exhibits, because I was going to offer them all before I conclude.

Mr. Mitchell: I will do that then.

Mr. Westbrook: Plaintiff's Exhibit 2-E. Plaintiff's Exhibit 2-F. Paramount's Exhibit I-1. Paramount's Exhibit I-2. Joint Distributors Exhibit P-18. Plaintiff's Exhibits 26-O; 26-P; 22-B. Exhibit 6-Z. 7-C. 6-X. 15-A. 14-V. 14-R. 14-N. 14-J. 10-P. 10-N and 10-L.

The Court: They may be received in evidence. Show them in.

Mr. Westbrook: There is also another one that is not in evidence yet, and that is Warner's Exhibit H-1.

The Court: It may be received. [1675]

(The exhibits heretofore marked Plaintiffs' Exhibit 2-E, 2-F; Paramount's Exhibits I-1 and I-2; Joint Distributors Exhibit P-18; Plaintiff's Exhibits 26-O; 26-P, 22-B, 6-Z, 7-C, 6-X, 15-A, 14-V, 14-R, 14-N, 14-J, 10-P, 10-N, 10-L and Warner's Exhibit H-1, were received in evidence.)

Mr. Mitchell: I offer those documents in evidence.

The Court: They have been received.

Q. (By Mr. Mitchell: Mr. Schreiber, I will show you here a list of theatres with the heading, "Theatres in Territory of Paradise," and ask you

(Testimony of Alex Schreiber.)

if you have seen that before? (Handing document to the witness.)

A. Yes, I have seen this before.

Q. Will you tell the jury what it is?

A. I will be glad to. It is a list of theatres in the territory of Paradise. It lists the theatres, the seating capacity, the run that they were playing of the pictures and who the operators or the owners of the theatres were. [1676]

Q. And who prepared it?

A. I had this prepared, I believe by Keith McCallum. He works for Exhibitors Service.

Q. What were your instructions to him with respect to the preparation of this?

A. I just asked him to get me a list of theatres and the seating capacity and on what availability they were running pictures.

Q. In the territory of the Paradise?

A. That's right. Not the Paradise, all over. This would be—he has the Alto Theatre in there. That is nowhere near the Paradise.

Q. We will come to that in a minute.

A. Okay.

Mr. Mitchell: I will offer the document in evidence, your Honor.

Mr. Corinblit: We will have no objection, your Honor, provided it is stipulated this document was a part of another document, and Mr. Mitchell has pulled it out of another document.

The Court: If you can establish it is part of an-

(Testimony of Alex Schreiber.)

other document, you may be able to introduce the rest of the document.

Mr. Corinblit: Yes, sir. Thank you.

The Court: Objection overruled. This may be admitted. [1677]

The Clerk: Has this been marked?

Mr. Mitchell: No, it hasn't been marked.

Mr. Corinblit: I think before we go any further, we ought to establish it was part of Exhibit—will you give us the number of the defendant's exhibit?

Mr. Westbrook: I believe we have marked it in evidence.

Mr. Corinblit: Just a minute. I will get the one from which it was taken.

The Clerk: Joint Distributors' Exhibit L-2.

(The exhibit referred to was received in evidence and marked as Joint Distributors' Exhibit L-2.)

Mr. Corinblit: It is stipulated, is it, counsel, that this document was a part of Exhibit 45-K?

Mr. Westbrook: Correct.

Q. (By Mr. Mitchell): Now, you showed this list of theatres to the distributors in New York when you went to see them with Mr. Simon, isn't that true?

A. No. I don't remember whether I showed it to them. I don't know whether it was made up at that time or not.

Q. You don't remember whether you showed it to them or not? A. No. [1678]

* * * * *

(Testimony of Alex Schreiber.)

Q. (By Mr. Mitchell): You understand, Mr. Schreiber, Cabart is another company with which Marco is associated?

A. Yes, I heard that.

Mr. Mitchell: Rio, 1,000 capacity, 21 days, Cabart.

Alto, 1,000 capacity, 21 days, Cabart.

Mr. Corinblit: Your Honor, I don't mean to interrupt, but I wonder whether this would be an appropriate time to offer the remaining part of the document.

Mr. Mitchell: I would prefer to go forward.

The Court: I think you better wait.

Mr. Corinblit: All right.

* * * * *

Q. (By Mr. Mitchell): When you talked with these distributors in New York, Mr. Schreiber, you did show them this little map of the area which is now in evidence as Exhibit Paramount B-4, correct? Can you see it from there?

A. Oh, yes, I know what you have there.

Q. You showed that to the distributors in New York?

A. I showed it to them and I left them a copy.

Q. The Paradise Theatre is dependent upon automobile traffic to get its patrons to the theatre, isn't that true?

A. A good portion of our business is automobile.

Q. You couldn't stay open without automobile traffic, could you? A. No, we could not.

Q. You have what you consider very good park-

(Testimony of Alex Schreiber.)

ing facilities there, isn't that true? A. It is.

Q. And you use advertising to attract people to your theatre, don't you? A. We sure do.

Q. You did a lot of radio advertising, didn't you? A. When we first opened, we did.

Q. You had advertisements put over the air on KWFC, KFDC and KFBD?

A. I don't remember the stations, but we did have radio advertising over several stations.

Q. Trying to get people to come into your theatre?

A. That is the purpose of the radio advertising.

Q. You expected them to come in by automobile, didn't you?

A. Or foot traffic, anyway they saw fit, as long as they came to the theatre.

Q. You expect most of them to come by automobile, [1681] don't you?

A. Not necessarily.

Q. Well, you expected some of them to come by automobile, certainly?

A. We expected to get full houses by radio advertising and newspaper advertising and we weren't particular whether they came by automobile or on foot.

Q. Or where they came from?

A. That is correct.

Q. You also advertised in the Inglewood newspapers, didn't you?

A. We advertised in the Inglewood newspaper when there was no newspaper in Westchester.

(Testimony of Alex Schreiber.)

There was one little paper in Westchester that was just getting started, so the only paper we could have really advertised in was the Inglewood, because the Inglewood paper had one of their largest circulations in Westchester. They came into Westchester.

Q. It had a pretty large circulation in Inglewood, didn't it?

A. I don't know what they had in Inglewood.

Q. Didn't you suspect there were quite a few in Inglewood that took the Inglewood paper and would see your advertisements?

A. I imagine they did.

Q. You wanted people from Inglewood to come to the [1682] theatre, didn't you?

A. Wanted people from Inglewood, from the entire Los Angeles area to see the beautiful theatre and see the pictures.

Q. Including people from Inglewood, too, you were trying to attract them?

A. Trying to attract people from all over.

Q. I understand that, but you were trying to attract people from Inglewood?

A. They were included.

Q. So that is why you advertised, for one reason, in the Inglewood paper?

A. No, because the Inglewood paper was practically the only paper distributed to the people in Westchester.

Q. So you advertised in the Inglewood paper, not to get people in Inglewood, but people in Westchester, is that it?

(Testimony of Alex Schreiber.)

A. That is what we were interested in, Westchester people.

Q. Weren't you interested in the Inglewood people?

A. We would not refuse their money. We would not tell them they were restricted from coming into the theatre.

Q. Yesterday I asked you these two questions and you answered, and I want to ask one more. This is at page 1636:

“Q. You think a theatre on a 7 day availability in Westchester could perhaps get a gross [1683] of some four to six thousand dollars on a 7 day run, isn't that right? “A. Yes, sir.

“Q. And on the other hand, on a 21 day run, it could only gross say from \$1800 to \$2400?

“A. And even less than that.

“Q. And even less?

“A. That's right.”

Then I now want to ask you, so that there are about \$2,000 to \$4,000 worth of admissions in Westchester that leave the Westchester area to see the prior 7 day run in the event Westchester is only playing 21 days, right?

Mr. Corinblit: Where?

Mr. Mitchell: Will you let me ask the question? I am asking him the question.

The Witness: Read my answer.

Mr. Mitchell: Well, I will read it. You don't want to answer that question now?

(Testimony of Alex Schreiber.)

The Witness: Yes, but I think I answered it yesterday.

Q. (By Mr. Mitchell): What is your answer now? A. It is impossible.

Mr. Mitchell: I would like to read from the witness' deposition then, your Honor.

The Court: All right. [1684]

Mr. Mitchell: You will stipulate, I suppose, he gave the answer in the deposition?

Mr. Corinblit: Yes.

Mr. Mitchell: Page 529, line 17 to 23, this is the witness' statement:

"A. Where we played pictures on 21 day and took in \$1,800 to \$2,400 on a 21 or 28 or 35 day run, we would have had that same picture on a 7 day run, we may have taken in from \$4,000 to \$600 on the picture"——

The Witness: \$600?

Mr. Mitchell: "——\$6,000 on the picture. I will subtract the two and you will get an idea in dollars and cents how many left the Westchester area to see the picture." [1685]

Q. Now, with respect to your attempts to get product from Paradise——

A. What is the question? Are you through with that then?

Q. I will be sworn if you want me to.

The Court: You just answer the questions and don't ask questions. Your duty is to answer and not to ask questions.

(Testimony of Alex Schreiber.)

The Witness: I didn't know whether he was finished with that subject.

Q. (By Mr. Mitchell): I am returning to Paradise and let us go back to April 12, 1950, when you met with Mr. Smith and Mr. Taylor at the Paramount exchange and asked for first run Los Angeles day and date. Well, I guess you didn't say—you just wanted first run.

Did you say how you wanted to play it—who you wanted to play with.

A. Nonexclusive first run.

Q. You didn't care who you played with just so long as you got first run? A. That is right.

Q. And that is what you told them?

A. That is right.

Q. And they told you that they had a franchise with Fanchon & Marco, didn't they?

A. They did. [1686]

Q. And you knew that to be Marco Wolff's company? A. That is correct.

Q. And they told you that under that franchise they had to give clearance to Fanchon & Marco of seven days over all suburban towns and 21 days over all theatres in the City of Los Angeles, right?

A. I don't remember if we discussed the clearance, Mr. Mitchell.

Q. Well, they told you that under the franchise they couldn't give you a first run.

A. Day and date with those two theatres.

Q. And told you they were committed to Marco Wolff and his company? A. That is correct.

(Testimony of Alex Schreiber.)

Q. For their pictures? A. That is correct.

Q. What they told you was that the franchise was exclusive, isn't that true?

A. That is right, and nobody else could get first-run pictures from Paramount.

Q. All right. Now, you later on entered into a contract with Marco Wolff so that he could buy and book pictures for your Paradise Theatre, didn't you? A. That is correct.

Q. I will show you a contract dated August 16, 1950, [1687] between Paradise Theatre Building Corporation, Southside Theatres and Alex Schreiber, and ask you if that is the contract which you refer to.

(Document handed to the witness.)

The Witness: Without reading the seven or eight pages I think this is the contract.

Q. (By Mr. Mitchell): Well, I am sure it is. I represent to you that it is. A. Yes.

Mr. Corinblit: This is a photostatic copy of the exhibit we marked.

Mr. Westbrook: Photostatic copy of the original with the signatures appended.

Mr. Corinblit: All right.

Q. (By Mr. Mitchell): You are satisfied those are the correct signatures?

A. Yes, there is no question about that.

Q. The signatures of the other officers.

Mr. Mitchell: I will offer the contract in evidence, your Honor.

The Court: It may be received in evidence.

(Testimony of Alex Schreiber.)

The Clerk: Joint Distributors' Exhibit C-3.

(The document referred to was received in evidence and marked as Joint Distributors' Exhibit C-3.)

Mr. Mitchell: Now, I would like to read a portion of [1688] this to the jury, your Honor, the pertinent portions.

The Court: You may do so.

Mr. Mitchell: This is the document which you and Marco Wolff and other officers signed. I am reading from page 3, the opening part of paragraph C:

"The owners of Southside Theatre Corporation are all related and are members of the Wolff family and they together own all of the stock of the said Southside Corporation.

"These stockholders are also stockholders in Fan-
chon & Marco, Inc., a California corporation, which operates many motion picture theatres, including the Paramount Theatre on the corner of 6th and Hill Streets in downtown Los Angeles, and the Paramount Hollywood Theatre at 6838 Hollywood Boulevard. And also the Baldwin Theatre at 3714 South La Brea.

"The two Paramount Theatres mentioned are operating on franchises originally made by Paramount Pictures, Inc. for the exclusive first run day and date of Paramount pictures."

Q. (By Mr. Mitchell): So that you understood in 1950 the run was exclusive—that is what they told you, isn't it? A. Yes.

(Testimony of Alex Schreiber.)

Q. That was Mr. Smith and Mr. Taylor [1689] who told you that and that is what Marco told you?

A. That is right.

Q. Now, you talked about the dispute between Paramount and Marco about the validity of that franchise, didn't you? A. With——

Q. Smith and Taylor.

A. Taylor and Smith, yes.

Q. And they told you that there was litigation pending to determine whether or not the contract, the franchise was valid? A. That is correct.

Q. And they told you during that litigation they had a stand-by agreement under which they were going to continue to serve pictures to Marco Wolff at the Paramount Downtown and the Paramount Hollywood Theatres? A. That is correct.

Q. And only to those theatres they told you?

A. That is what they told me.

Q. That is right. And they told you that if they were able to consider licensing additional first-run theatres there were a lot of other theatres in addition to Paradise, that would have to be considered in determining what to do, didn't they?

A. I believe they said something along those lines.

Q. They told you the La Tijera had asked for first run, [1690] didn't they?

A. That is right.

Q. And that the Picwood had?

A. No, I don't think they mentioned the Pic-

(Testimony of Alex Schreiber.)

wood wanting first run in those days, because Picwood, I think, had a 21-day and they had to sue to get a better run.

Q. Whatever may be the fact, I am asking what they told you. You say they didn't tell you that Piewood wanted first run. A. I don't think so.

Q. Did they tell you the Crown in Pasadena wanted first run? A. They may have.

Q. Did they tell you that the Baldwin—that Marco Wolff for the Baldwin and Marco Wolff for the Manchester and Marco Wolff for the Southside had also asked for first run?

A. I don't believe they mentioned the Southside, but I am sure they mentioned the Baldwin.

Q. They told you in any attempt to give first run to the suburban theatres that they just couldn't pick Paradise out of the clear—they would have to consider what was going to happen with respect to all the similarly situated theatres, didn't they?

A. They said that—they said that, but I told them they didn't do that in the case of the Loyola.

Q. Well, you told them they didn't do it in the case of the Loyola and that was the two pictures that Paramount had over five years licensed to the Loyola? [1692]

A. At that time it wasn't five years. And I told them that whatever they gave the Loyola we would like to have the same courtesy extended to the Paradise.

Q. I see. You mean whenever there was a pic-

(Testimony of Alex Schreiber.)

ture that for one reason or another they couldn't play in the Paramount you would like to have that consideration?

A. No. I told them I would like to have the consideration of the two or three or one picture at that time, that had played from their exchange, from Paramount, had played in the Loyola Theatre. We would like to have the same privilege they gave to the Fox-West Coast Theatres given to the Paradise. We would like the same consideration and we had a bigger house and a newer house that was to be built.

Q. All right. Now, during the time of your operation from August 1950 to September 1951 Paramount didn't play any of its pictures in the Loyola, did it?

A. Mr. Mitchell, we were talking, weren't we, about April 12, 1950?

The Court: Just answer the question. The question is certainly intelligible. Read the question to the witness, Mr. Reporter.

(Question read.)

The Witness: No.

Q. (By Mr. Mitchell): And they didn't play any of their pictures in your theatre? [1693]

A. No, they did not.

Q. And they didn't play any of their pictures first run in any theatre during that time except the Paramount Downtown and Paramount Hollywood, is that right? A. I believe that is right.

(Testimony of Alex Schreiber.)

Q. They told you then that they were going to offer in that area, the Inglewood-Westchester area two 7-day runs and two 14-day runs, isn't that true?

A. Yes, I believe they either said they were going to or they were.

Q. Yes. I think they probably told you they were offering those two. They told you that a lot of new theatres had come into that area and had created quite a problem to solve, didn't they?

A. Well, words along that line, yes.

Q. And that they were attempting to try to set up a plan that would enable them in an orderly manner to serve the many new theatres and the several old theatres that were in that area. Didn't they tell you that?

A. That is correct.

Q. Did you talk to them again after June 1950, after they set up a second plan?

A. I may have, I may have.

Q. At the time you talked in April 1950 they had a plan where they had some sort of a line, a line dividing this [1694] area into two parts?

A. Yes.

Q. And then you talked with them after they revised that plan and instituted their plan of small areas of priority of availability?

A. I don't know whether I talked to them or not, Mr. Mitchell, or Marco Wolff or my son, but they changed the plan because they claimed the important exhibitors in the area objected to the original plan, so they were going to try another plan.

(Testimony of Alex Schreiber.)

Q. All right. And did they try another plan?

A. Yes, they changed the first one to—I think the second one is still operating and in use.

Q. They talked about a problem that they referred to as the leap-frog problem, didn't they?

A. That is right.

Q. They told you that if the Paradise were to win a bid that it should have priority of availability over the La Tijera, didn't they?

A. Yes.

Q. That is what they thought?

A. Yes. If the Paradise won the picture they would have clearance over the La Tijera and the theatres, some of the theatres in Inglewood and a theatre got the other 7 days in Inglewood. They would overlap the next theatre. It was a [1695] leap-frog arrangement that extended from the Paradise to the Southside Theatre or the Academy and the Southside or the Academy only.

Q. They told you that they thought that the La Tijera Theatre would draw people from Westchester and also from the easterly portion of Inglewood, didn't they tell you that?

A. Well, they said——

Q. I don't mean the easterly portion. I mean the westerly portion of Inglewood.

A. Yes. They mentioned that they thought that we were in competition and would draw people from one another.

Q. They thought the La Tijera would draw

(Testimony of Alex Schreiber.)

people from over in Westchester and draw people from Inglewood? A. That is correct.

Q. And they told you that they thought, for instance, the Fox or United Artists Theatre in downtown Inglewood would draw people from the same area as the La Tijera drew from?

A. That is right.

Q. And then they told you that they thought the Academy and the Fifth Avenue would draw people from the west—some of the people that would be attending the United Artists or the Fox and also from the east, didn't they?

A. And also from the Paradise.

Q. Well, under what they were talking about they were going to let the Paradise run free and clear of the Academy [1696] and Fifth Avenue, isn't that correct?

A. No. They wanted clearance.

Q. You didn't understand that?

A. That was a leap-frog clearance.

Q. You didn't understand that—you didn't understand it the way I said it? A. Well—

Q. That you could run day and date with the Academy? A. If it was possible, yes.

Q. Well, it would be possible if you would bid the second most, wouldn't it?

A. No. If Fox West Coast would permit it we could, yes.

Q. Whether Fox West Coast—you didn't understand that whether Fox West Coast permitted it

(Testimony of Alex Schreiber.)

or not—you understood under the Paramount plan that you could play day and date with the Academy if you would make the second highest bid?

A. No, we couldn't do it if we made the first highest bid. [1697]

Q. All right, and they also told you that the Academy and the Fifth Avenue would be drawing somewhat from the same area as the Southside, didn't they?

A. No. They said that the Southside and the Academy don't draw from one another.

Q. And they told you, also, that the Academy and the Fifth Avenue would draw somewhat from the same area as the Imperial and the Rio, right?

A. I don't remember that, Mr. Mitchell.

Q. Didn't they tell you that in this area the giving of a prior run to one theatre would affect the drawing power of other theatres?

A. I don't think they used it in that term, but that is about what they meant.

Q. That is what they meant, isn't it?

A. They meant that, yes, sir.

Q. And that like a ten-pin, that is in a bowling game, you understand about bowling, if you do it to one, that affects another, and that affects another, and so from one side of Inglewood to the other, it would have an effect, isn't that about what it was?

A. But if you want to make a comparison of a bowling game, the ball goes in the gutter, too, and doesn't hit the pins. [1698]

* * * * *

(Testimony of Alex Schreiber.)

Mr. Mitchell: May we have Paramount's Exhibit C-3?

Q. (By Mr. Mitchell): Mr. Schreiber, I want to show you Paramount's Exhibit C-3, which is a letter dated August 31, 1950, from Mr. Taylor of Paramount to you and ask you if you received that letter from Mr. Taylor. A. Yes, I did.

Mr. Mitchell: I will offer the letter in evidence, your Honor.

Mr. Corinblit: No objection.

The Court: It may be received in evidence.

The Clerk: Paramount's Exhibit C-3. [1699]

(The exhibit referred to was received in evidence and marked as Paramount's Exhibit C-3.)

Mr. Mitchell: I would like to read this letter to the jury.

The Court: All right.

Mr. Mitchell: This is a letter on the letterhead of Paramount Film Distributing Corporation dated August 31, 1950, addressed to Mr. Alex Schreiber, Southside Theatres, Inc., 6838 Hollywood Boulevard, Hollywood 28, California.

Q. 6838 Hollywood Boulevard was Marco's address, correct? A. Yes. It was not my office.

Q. It was his office in the Hollywood Paramount Theatre? A. That is correct.

Q. Where Marco had his headquarters?

A. That is where he was buying and booking the pictures for the Paradise from. [1700]

* * * * *

(Testimony of Alex Schreiber.)

Q. (By Mr. Mitchell): Now, with respect to this paragraph where he suggests that if you have a more feasible plan that would be fair and equal to all of the exhibitors, to present it to him.

You didn't try to present any such plan to him, did you?

A. No. We were interested in operating our Paradise Theatre and getting pictures.

Q. You didn't care about what happened to the other theatres.

A. No matter what plan we would suggest or what we said to Paramount they would still do what they wanted to do, so there would be no sense in suggesting a plan.

Our plan was, if I am not mistaken, to try to let us play day and date with the Fox house, with the United Artists house, with the La Tijera, to try to experiment with it, but that was our suggestion, but they paid no attention to it.

Now, to put it in writing or any other way would just be lost time and lost effort. [1704]

We asked them to experiment, to try it, let us play with the Fox house, let us play them, but they wouldn't let us.

Q. In your view, Mr. Schreiber, you were anxious to get something for the Paradise, weren't you?

A. That is why we built the theatre, Mr. Mitchell.

Q. And you didn't care about what happened to these other theatres.

(Testimony of Alex Schreiber.)

Mr. Corinblit: I object to the question as being argumentative.

The Court: Sustained.

Q. (By Mr. Mitchell): Under the Paramount plan, Mr. Schreiber, assuming the Academy got the bid, you could play if you got the—if you put in the second highest bid, you could play day and date with the Academy. You knew that, didn't you?

A. That was supposed to be the meaning of the letter, but——

Q. That is what they told you, isn't it?

A. I think that is the interpretation of the letter, but it never happened I don't believe. I think we had one picture, but not with the Academy.

Q. All right. So that you recognized that the Academy was a very good grossing theatre. You knew that?

A. Yes, sure. It is a very profitable theatre. It [1705] was a Fox house and it was very profitable.

Q. And it is a very fine theatre, isn't it?

A. Yes, sir. The same architect that built our theatre built that theatre.

Q. Maybe it is as good a theatre as your theatre.

A. It is possible.

Q. Or even better.

A. Might be in the opinion of some people.

Q. Now, let us suppose under this Paramount plan of offering two seven-day runs in the Inglewood-Westchester area, let us suppose the Paramount makes the—the Academy makes the highest bid and Paramount awards that bid to the Academy,

(Testimony of Alex Schreiber.)

now the only other theatres in the area under the Paramount plan that can play the picture are the Southside and the Paradise. Didn't you know that?

A. No. I believe the La Tijera could if they let them.

Q. Then you didn't understand that only the Southside and the Paradise could play day and date with the Academy.

A. The Southside, the Paradise and the Academy?

Q. Now, just a minute. Either of—they have two runs. A. Two seven-day runs.

Q. The Academy gets one.

A. That is right, they get one. That is right, they get one. [1706]

Q. They got one if they bid the highest. Let us assume they bid the highest and got one run.

A. Yes, all right.

Q. Now, that leaves one more Paramount run.

A. That is right.

Q. On seven days. A. That is right.

Q. Didn't you understand the only theatres Paramount would play that second seven-day run in would be either the Southside or the Paradise? Didn't you understand that?

A. No. I believe the La Tijera could have played the second seven-day run if they had the second highest bid.

Q. Well, I think if you will look at—I am now reading again from Plaintiff's Exhibit P-1 or is it

(Testimony of Alex Schreiber.)

1-P-1, which is the letter of June 28, 1950, explaining this plan. It says here:

"If one of the theatres, La Tijera, Fox, United Artists, Academy or Fifth Avenue, makes one of the two best offers it will receive a prior run over all of the other theatres in this group."

Now, that means to you, does it not, as an exhibitor in the business, that if the Academy, which is one of that group, gets the bid it gets a prior run over the La Tijera Theatre, among others? Isn't that what it means to you?

A. That is through the leap-frog method, yes.

Q. Well, whatever you want to call it, if the Academy gets the bid then it gets a priority of run over the La Tijera, right?

A. Yes, I believe that letter indicates that.

Q. Now, you understand that the La Tijera and the Academy can't play day and date.

Mr. Corinblit: Under that letter?

The Witness: Under that letter.

Q. (By Mr. Mitchell): That is the Paramount plan, is it not?

A. The second letter changes it, the August letter changes the June letter.

Q. What letter changes the June letter? Will you show me a letter that changes it?

A. Didn't you just read the second letter of August, Mr. Mitchell?

Q. Yes, I just read an August letter.

A. Isn't that the letter, or is it the other, where the exhibitors in the area have objected, so there-

(Testimony of Alex Schreiber.)

fore they have changed the plan and now are going to release the pictures differently?

Q. I think perhaps you are confused and let us eliminate the confusion.

A. Weren't there two letters, Mr. Mitchell?

The Court: May I ask the witness a question, please? [1708]

Do not try to examine counsel, Mr. Witness. Your job is just to answer the questions. If you don't understand you can say, "I don't understand."

The Witness: Thank you.

Q. (By Mr. Mitchell): Prior to June, 1950, you understood there was a plan whereby Paramount offered two seven-day runs, and two 14-day runs in the area, and they set up their priority of availability on the theory of dividing the area into two parts, with an imaginary line.

Do you remember that? A. That is right.

Q. Now comes June, 1950, this letter which I have just read to you, in which Paramount presents a new plan. Do you remember that?

A. (No response.)

Q. A new plan?

A. I thought the first one you mentioned was the June letter.

Q. No, Mr. Schreiber. A. Well, go ahead.

Q. The June letter presents the plan that has been in effect ever since, a plan under which the La Tijera and the Academy cannot play day and

(Testimony of Alex Schreiber.)

date. That is what you understood that paragraph in the June plan to say, isn't it?

A. No, I don't believe I understood it that way. [1709] They explained the leap-frog clearance.

Q. Now, didn't they tell you under that plan, that if the Academy got the bid it would have priority of run over the La Tijera, the United Artists, the Fox and the Fifth Avenue. Isn't that right? Isn't that what they told you?

A. I believe that is right.

Q. And they also—let me read this paragraph:

"If the Academy or Fifth Avenue makes one of the two best offers that theatre will receive a prior run over the group just above."

And that is the group that we were talking about, the La Tijera, the Fox, the United Artists and the Fifth Avenue.

"They will receive priority of run over that group and also over the Imperial and the Rio."

So that means, does it not, Mr. Schreiber, that if the Academy wins the bid none of these theatres that I am about to name can play day and date with the Academy: La Tijera, the Fox, the United Artists, the Fifth Avenue, the Imperial, and the Rio? A. That is correct. [1710]

Q. That is correct, isn't it? All right. Now, that leaves in the area for the second Paramount 7 day run two theatres, the Paradise and Southside.

A. That's right.

Q. So that all you have to do under the Paramount plan, if the Academy gets the picture, is to

(Testimony of Alex Schreiber.)

put in the second highest bid, bidding against the Southside, that's right, isn't it?

A. If we were required to bid against the Southside.

Q. That's right. Now, Marco is running your theatre and he is running the Southside Theatre.

A. That's right.

Q. Now, if Marco on a picture that the Academy gets, a Paramount picture that the Academy gets, if Marco will put in the highest bid for your theatre, your theatre gets the second Paramount run, right?

A. That's right.

Q. And if Marco puts in the second highest bid for the Southside, his Southside gets the second Paramount 7 day run, right?

A. If he puts in a bid, yes.

The Court: Then it was Marco who decided whether the run would go to the Southside or the Paradise?

The Witness: Well, your Honor, I was thinking that is what Mr. Mitchell was leading up, but that was not the [1711] case. That was not the case.

The Court: Well, Mr. Marco is the one who decided to make the bids. He could make the bids any way he wanted to. He could make the bids so all the Paramount pictures would go to the Southside Theatre, his theatre.

The Witness: Well, I understand Mr. Marco is going to be here, your Honor, so we will let Mr. Marco explain that.

The Court: All right.

(Testimony of Alex Schreiber.)

Q. (By Mr. Mitchell): Now, with respect to Universal pictures, in the business pictures are known as A, B, C, and D pictures, aren't they? Isn't that a common designation?

A. Yes, and double A's and triple A's and percentages.

Q. And nervous A's, is that right?

A. Yes.

Q. And nervous B's, isn't that right?

A. That is correct.

The Court: Mr. Mitchell, I understand the usual meaning of the word nervous, but I never heard it applied to a motion picture before. Will you tell me what you mean by nervous?

Mr. Mitchell: I am sure the witness can tell you. He understands what this is.

The Court: I know, but you are talking to the jury over here.

Mr. Mitchell: I am going to have him tell them, because [1712] I think he and I understand what nervous A pictures are.

Q. Will you tell me what an A, B, C, and D picture is and what you mean by nervous A and nervous B?

A. Years ago they used to sell pictures on an average. They used to figure, a theatre could figure that if they took in a thousand dollars a week, they figured to be successful, if they paid a maximum of 25 per cent for their entire film program. Then they could have a profitable theatre. Of course, at that time the distributors claimed the exhibitors

(Testimony of Alex Schreiber.)

were robbing them, that they should pay 35 per cent for their program.

Q. Let's get down to defining A, B, and C pictures. The history of the motion picture industry is long and it is fascinating, but we don't have time this summer to go into that.

A. It has changed considerable from the way the distributors used to sell pictures. They used to sell you so many A pictures, which were the top pictures. Let's say a theatre made a thousand dollars a week receipts. They would sell them four A pictures at \$100, and they would sell them four B pictures for \$75.

Q. Rather than what they do, will you tell me what an A picture is?

A. An A picture is the top price. If you are going to pay \$100 for it, it is the top picture that is expected to [1713] draw, a big picture.

Q. That is the best picture?

A. That's right.

Q. That is the best type. What is a B?

A. The B in the mind of the distributor is the next group that they think will draw a little less, so, therefore, you pay a little less for the picture. And the same way with the C.

Q. What is a C picture?

A. A little less than the B picture.

Q. You are getting down pretty low when you get to the C, aren't you?

A. That is the way they started, but then they changed to the C to the B and put the B into the

(Testimony of Alex Schreiber.)

A, and then they took the A's and made them double A's, and they took the B pictures and moved them into the A's, and then to the AA's and the AAA's, and then they added to that percentage, and you always got the percentage pictures, and you always got the triple A's and the double A's, but you never got an A or a B, so instead of what your average was supposed to be, \$80 a feature, you were now up to 160.

Before where they wouldn't have any bidding, where a theatre used to pay for an A picture \$100, today he is paying \$500 and \$600, because the distributor has made him bid against theatres that are not in substantial competition with [1714] him, so there you have got your step-up.

The Court: I am trying to find out——

The Witness: About the nervous pictures?

The Court: This word nervous. Is that the attitude the exhibitor took?

The Witness: The nervous picture, your Honor, is when the distributor tells him he has got a world beater, one that is going to break all house records, literally speaking, they are going to be standing outside in the streets, and you got to pay \$1,000 for that because it is going to break your house records, and so-and-so paid two million or four million for the picture, like Carousel. One of those pictures where you spend a million dollars, and they get them so they give 50 per cent, and a thousand dollars or two thousand dollars guarantee, and pay so much for the advertising campaign. They tell them

(Testimony of Alex Schreiber.)

everything under the sun, how they spent money for magazine advertising.

So he falls for the story and—well, he is nervous until he gets through playing the picture.

Q. (By Mr. Mitchell): A nervous A is one that you figure isn't going to quite become an A?

A. It is a picture he overpays for, because you couldn't get it unless you bid.

Q. So far as Universal pictures are concerned, in 1950 and 1951, the great majority of them were C, D, and E [1715] pictures, isn't that right?

A. They may have had a little more to—did you start with C or D?

Q. I said a great majority of them were C, D, and E pictures.

A. Well, they—well, I don't think they had E pictures, because today they don't sell no E pictures. That is unheard of. But they may have had a little more than Paramount, Warner Bros., Fox or Metro.

The Court: You mean to say they still make E pictures, but they call them B, a different designation?

The Witness: Yes, sir, you are right.

Q. (By Mr. Mitchell): I would like to read to you from your deposition. I am sure you haven't changed your mind since you gave it on February 13, 1956. There is no question but what this given was given?

Mr. Corinblit: Page what?

Mr. Mitchell: Page 839, lines 4 to 9.

(Testimony of Alex Schreiber.)

“Q. In your opinion are all Universal pictures C, D, and E pictures?

“A. At that time I would say a great majority of them were.

“Q. That is during 1950 and 1951?

“A. During the last 10 years.”

Mr. Corinblit: Will you go on, counsel, to the next [1716] question and the next answer?

Mr. Mitchell: “Q. In other words, you didn’t really regard Universal product as suitable for exhibition at the Paradise Theatre?

“A. Yes. We would be tickled to death to get it.”

Do you want more?

Mr. Corinblit: That’s enough.

Mr. Mitchell: Fine.

Q. Universal offered you a 7 day availability on a bid, didn’t it, during this period from the time you were open until September 1951?

A. I believe they did.

Q. And during the time that Marco was running the theatre, he made some bids? A. He did.

Q. And got at least one picture?

A. He got one picture? Is that the question?

Q. Do you remember playing Desert Hawk?

A. Yes, our second week we opened.

Q. But after Marco left, why, you wouldn’t make any bids, is that right?

A. After he left?

Q. Yes, after he left your employ.

A. I don’t believe Marco bid all the pictures

(Testimony of Alex Schreiber.)

from [1717] Universal while he was there. He may have, but I don't believe so.

Q. He just bid some pictures, but after Marco left, the Paradise wouldn't bid for any Universal pictures, isn't that right?

A. I don't remember if that is after Marco left. I believe even while Marco was booking the house, I think there were a lot of pictures he did not bid. He wanted to negotiate, and I think the pictures he did bid, I think he put in there no clearance over any theatres, if you will try to locate the letter.

Q. All right. I didn't ask you about that. I was just asking you whether after the time that Marco left—let us establish a date, commencing January 1, 1951, thereafter Paradise didn't make any bids for Universal pictures, is that right?

A. I don't believe they did. Mr. Lehman was handling the buying and booking after Marco, and I believe he was trying to negotiate the pictures.

Q. And not bid?

A. Not bid. He was trying to negotiate.

Q. All right. Now, let us talk about Warner pictures. When you went in to see Mr. Herbel—

A. Pardon me, Mr. Mitchell. Well, I can't ask you a question. Go ahead.

Q. After court. On March 30, 1950, you went to see Mr. Herbel at Warner Bros.?

A. In March, 1950?

Q. That is right.

A. Yes, I believe that is the time.

Q. Mr. Greenberg also was there?

(Testimony of Alex Schreiber.)

A. Yes, he was.

Q. Mr. Herbel is now deceased?

A. That is correct.

Q. And you and Mr. Herbel and Mr. Greenberg for Warner Pictures—you asked those gentlemen for Warner [1719] Bros. first run Los Angeles?

A. That is right. I believe my son was there also.

Q. I see. And they told you that Warner Bros. owned three theatres or perhaps you already knew that?

A. Yes, I knew it and they told me so.

Q. The Warner Hollywood, the Warner Downtown and the Warner Wiltern, right?

A. That is right.

Q. And they said that they wanted to play their pictures in their own theatres, didn't they?

A. Well, words to that effect.

Q. And that they were going to play the pictures in their own theatres?

A. That is right. I think those were the words.

Q. And weren't going to play them in any other theatres?

A. That is correct.

Q. They told you that that enabled them to exploit their pictures first run in the way that they desired to do so without any interference from anybody else?

A. Well, I don't believe they mentioned they were going to exploit the pictures. They just said they were going to play their pictures in their own theatres.

(Testimony of Alex Schreiber.)

Q. They told you those theatres needed the pictures?

A. We didn't discuss whether they needed them or not. They just told me they were going to play their pictures in [1720] their theatres and nobody else could have them.

Q. And they told you they didn't propose to dilute their receipts at their theatres by having some other theatre playing day and date with them? Didn't they tell you that?

A. No, they didn't use those terms.

Q. Isn't that in substance what they said?

A. Yes, in substance that is what it would mean, but you said it different than they did.

Q. All right. Now, at that time they told you that with respect to 7-day runs they were offering those by what they called "competitive negotiations," didn't they? A. Or bidding.

Q. No. Didn't they use the words "competitive negotiations?"

A. They may have or they may have used the word "bidding." We were in there a half hour. They may have used both expressions.

Q. Well, perhaps you didn't know, but at the time you opened your theatre in August, 1950, Warner was not sending out bid requests but on the other hand was simply taking over the telephone offers for pictures, isn't that right?

A. I don't know how they were doing it.

Q. You don't know how they were doing it. If you [1721] don't know, then don't try to tell us.

(Testimony of Alex Schreiber.)

A. Okay. I mean, I don't know if they were doing it on the telephone or having their salesmen go over and visit the exhibitor or the salesmen go to the Fox office and negotiate with them at the Fox office. I don't know how they did it. I wasn't interested in how they sold their pictures.

Q. Well, you were interested in getting some Warner 7-day runs?

A. Yes, but I wasn't interested in how they were selling the other theatres in Los Angeles or the State of California.

Q. You were mighty interested in how they were selling the theatres in Inglewood and the Westchester area?

A. I surely was. Especially I wanted pictures for the Paradise. That is why we built the theatre. We had to have pictures.

Q. Now, in wanting pictures for the Paradise, you knew that when you opened the theatre Warner was offering pictures by what they called "competitive negotiations" and by that I mean that either over the telephone or by personal visits salesmen would talk with exhibitors in the Inglewood-Westchester area and ask them for offers and find out who would give the best offer and give the picture to him. Didn't you know that is the way they were doing their business?

A. I don't know how they were doing business with [1722] somebody else, Mr. Mitchell.

Q. They were coming to you and asking you for an offer?

(Testimony of Alex Schreiber.)

A. Well, if you want to use the word "you," they were negotiating with Marco Wolff.

Q. But they were negotiating?

A. Marco Wolff.

Q. And they called that negotiating "competitive negotiations," didn't they, in their conversations with you?

A. I had no conversations with them, Mr. Mitchell.

Q. Well, you had a conversation with Mr. Herbel and Mr. Greenberg?

Mr. Corinblit: That is in March of 1950, counsel. Now, don't confuse the dates.

Q. (By Mr. Mitchell): You had a conversation with Mr. Herbel and Mr. Greenberg in March of 1950? A. I did, yes, with my son.

Q. And they told you they were offering their pictures by competitive negotiation?

A. They may have used those words.

Q. And after the theatre opened, they continued to offer their pictures by competitive negotiations for a period of time, didn't they?

A. I don't remember. I believe at the time they told me that, as you said, they were competitive negotiations. [1723] That was the period of time that they had a set deal whereby the La Tijera and the Imperial were getting their pictures without bidding and the other theatres were not negotiating. The only theatres that were negotiating were the La Tijera and the Imperial, if I am not mistaken.

(Testimony of Alex Schreiber.)

Q. Now, on September 1, 1950, Warners began sending requests for bids to you. Do you remember that? A. September, 1950?

Q. Yes, shortly after you opened?

A. They may have.

Q. And they continued that until May, 1951?

A. They may have.

Q. And then they went back to competitive negotiation again, is that right? A. In 1951?

Q. Yes, 1951, in May. Do you remember that?

A. No, I don't remember the dates. I do remember what they did on the third picture.

Q. Well, Warner Bros. licensed you the first two pictures which you played in your theatre, isn't that true?

A. The first three pictures were given to Marco Wolff as an experiment that we talked about, to try out the house, the first three pictures.

Q. You opened with a Warner picture, didn't you? A. Yes, *Pretty Baby*. [1724]

Q. And the second picture you had was a Warner picture?

A. Not the second week but the second Warner picture, yes.

Q. I am sorry. Your second picture was a Universal, and your third picture was a Warner picture? A. That is correct, the third week.

Q. Mr. Herbel had agreed to give you two 7-day pictures, hadn't he? A. No.

Q. Well, let me see if I can refresh your recollection. If you would look at the deposition given

(Testimony of Alex Schreiber.)

by your son Max on April 9, 1956, commencing at page 66, and ending at page 68. If you would read that, please, I think that may refresh your recollection.

A. This is my son's?

Q. Yes. A. All right, Mr. Mitchell.

Q. Does that refresh your recollection that Mr. Herbel agreed to give the Paradise two pictures on a 7-day run? A. Well, this——

Q. You can answer that "Yes" or "No."

A. No, it does not.

Q. It does not refresh your recollection? [1725]

A. No, because Mr. Marco Wolff told me he was to get three pictures.

Q. You weren't present at the arrangement with Mr. Herbel at all then?

A. No, I was not. I was not.

Q. But you do know he agreed to give you some pictures on a 7-day availability?

A. Marco told me that he made arrangements with Mr. Herbel to get three 7-day pictures to get the theatre opened because in here, Mr. Mitchell——

Q. Well——

A. You asked me to read this, didn't you?

Q. Let me read it then to the jury. Perhaps that will straighten this out.

A. Okay, please do.

Mr. Mitchell: May I read this, your Honor, from the deposition?

The Court: Yes, you may read it.

(Testimony of Alex Schreiber.)

Mr. Mitchell: This is from the deposition of Max Schreiber, page 66, line 26, to page 68, line 24:

“Q. Now, you mentioned a second conversation with Mr. Herbel which, you said, you believed was a telephone conversation in which you, Marco Wolff, and Mr. Wolff participated. Is that correct?

“A. That’s correct.

“Q. Do you recall when that conversation occurred?

“A. Just prior to the opening of the theatre.

“Q. Was that a conference, or were you and Mr. Wolff together talking to Mr. Herbel or what?

“A. I was at Mr. Wolff’s office at the Hollywood Paramount. Mr. Herbel was at his office on Film Row and they were on the telephone and I was on the extension phone.

“Q. So you were able to hear both Mr. Herbel and Mr. Wolff? “A. Yes.

“Q. Now, will you tell me what was said by Mr. Wolff and by you and by Mr. Herbel on that occasion, as nearly as you can recall?

“A. Well, we had consummated an arrangement with Mr. Wolff to book and buy pictures for the Paradise Theatre and he was attempting to get us a picture to open the theatre with. The theatre had been completed for some five or six or eight weeks [1727] prior to the opening and we didn’t have any pictures to open with. We wanted to open on an early run and Mr. Wolff asked Mr. Herbel for pictures so we could open the theatre and——

(Testimony of Alex Schreiber.)

“Q. Did he say on what run he wanted the pictures? “A. First run.

“Q. First run Los Angeles?

“A. First run Los Angeles, and Mr. Herbel said he couldn't do that because they had to put their pictures in their theatres first, and I remember Mr. Marco asking him, well, what could he do, what did he suggest. He had to get the theatre open. He had a management arrangement with us and it was putting him in an embarrassing position with us, and Mr. Herbel said, well, in view of their friendship that he would date a picture on the 7th day for us, a picture called *Pretty Baby* that was going to be available the following week and he would date it and we could go ahead and prepare our ads for the opening of the theatre with that picture as our first picture, and Marco told him that he couldn't run one picture forever.

“There was another picture that was coming up the following week or something and would he date [1728] that, too, and I believe after quite a conversation Mr. Herbel said he would date both of the pictures for us so that we would know we would have pictures for a few weeks to get started in the theatre, and that would be on the 7-day availability, and Mr. Marco thanked him and told him he would see him at the farm on Sunday. They have a farm next to each other in Devonshire, and that was the substance, as I recall, of that conversation.”

The Court: Mr. Mitchell, maybe this is a pretty good place to break.

Ladies and gentlemen, we are about to take another recess and again it is my duty to admonish you not to discuss this case with anyone nor permit anyone to discuss it with you. You are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition we will now recess until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same date.) [1729]

Friday, July 27, 1956, 2:00 o'clock

The Court: Stipulate the jury is present in the box?

Mr. Mitchell: Yes, sir.

Mr. Corinblit: So stipulated.

The Court: You may proceed.

ALEX SCHREIBER

the witness on the stand at the time of the recess, having been first duly sworn, was examined and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Mitchell): Mr. Schreiber, on your judgment of the relative desirability of theatres from a distributor's standpoint, you think the Para-

(Testimony of Alex Schreiber.)

dise is an exceedingly good theatre for distributors to play their pictures in, isn't that true?

A. That is true.

Q. Let's talk about the 7 day run. That is true for the 7 day run? A. Yes, sir.

Q. Do you think your theatre is a better theatre than the Imperial Theatre, let's say?

A. You mean better as far as grossing or in appearance? [1730]

Q. No, as far as grossing.

A. Oh, I think we would have grossed a lot more money than the Imperial Theatre.

Q. How about the Rio?

A. I think we would have grossed a lot more money than the Rio.

Q. How about the Southside?

A. Oh, I believe we would have grossed as much, if not more than the Southside eventually.

Q. And how about the Fifth Avenue?

A. I think we would have grossed more than the Fifth Avenue.

Q. From your concept of substantial competition, you would say, would you not, Mr. Schreiber, that there is no substantial competition between the Academy in Inglewood and the United Artists in Inglewood, isn't that right?

The Court: No substantial competition?

Mr. Mitchell: Yes.

Q. Isn't that what you would say?

A. Just a minute. I am trying to picture the locations now.

(Testimony of Alex Schreiber.)

Q. The Academy on Manchester Boulevard.

A. Yes.

Q. And the United Artists in downtown Inglewood.

A. I would say that there is some competition. Whether [1731] it is substantial or not, I don't know. I would want to give that some thought.

Q. I think you have already thought about it. We will come back to that in a minute. You would say as between the Academy and the Fox Theatre, which is marked on here as the Fox Crest, that there is no substantial competition between those two theatres from your concept of it?

A. There may be because the Fox and United Artists, the first theatre you mentioned, they are across the street from one another.

Mr. Mitchell: I would like to read, your Honor, from Mr. Schreiber's deposition given on February 13, 1956, at page 596, line 11 to line 24.

"Q. Did you have any opinion as to whether the Fox Inglewood and the United Artists were competitive with the Academy?

"A. I have an opinion of that, yes. Whether I expressed it at that time or not, I don't remember.

"Q. Well, is your opinion any different now than it was in 1950?

"A. No, it is still the same.

"Q. What is your opinion?

"A. There is no competition between the Fox, United Artists, and Academy.

"Q. You don't think that they are dependent

(Testimony of Alex Schreiber.)

[1732] upon the same patronage for their attendance? "A. Not substantially, no."

Mr. Corinblit: Would you go on, please, to the next question and answer?

Mr. Mitchell: Yes. I will read just as long as you want me to.

"Q. How substantial is substantially competitive in your judgment and opinion, Mr. Schreiber?

"A. If they were to affect one another to the extent of 1500 or 2,000 a week.

"Q. Anything less than that is not substantial competition?

"A. No, because the film companies get the biggest share of the difference.

"Q. When you mean the film companies get the biggest share of the difference, what do you mean?

"A. The film rentals range anywhere from—well, maybe they don't with the Fox theatres, but they do with the Paradise.

"Q. They range anywhere from what to what?

"A. From 40 to 80 per cent to the film companies."

Any more?

Mr. Corinblit: That is up to you.

Mr. Mitchell: All right. [1733]

Q. On your Paradise Theatre in 1950 to 1951, the house expense of your theatre before cost of administration was \$2,200 a week, isn't that correct?

A. I believe that was our expense in the beginning, right.

Q. What do you mean, in the beginning?

(Testimony of Alex Schreiber.)

A. When we first opened up, the first few months we were open.

Q. The first few months. All right.

The Court: Did that \$2,200 a week include any salary to the officers of the corporation?

The Witness: That includes a salary to my son.

The Court: How much was that?

The Witness: \$20 a week.

The Court: Is that the only officer in the corporation that got any salary out of the \$2,200 a week?

The Witness: That is the only amount of salary paid. My son got \$100 a week, and he charged \$80 to the bowling alley and \$20 of the \$100 to the theatre.

The Court: Did this \$2,200 a week include the bowling alley?

The Witness: Oh, no, absolutely not.

Q. (By Mr. Mitchell): What was there attached to this theatre? There was a bowling alley, and did you have a restaurant there? [1734]

A. There was a coffee shop and the bowling alley.

Q. And a cocktail bar?

A. In the bowling alley.

Q. A cocktail bar there, also? A. Yes, sir.

Q. What else did you have besides that in connection with the theatre?

The Court: I suppose they had some bowling balls and some pins.

(Testimony of Alex Schreiber.)

Q. (By Mr. Mitchell): They always have popcorn and peanuts at the theatre, don't they?

A. I believe we had a nursery there where we had a matron to take care of children while the women were bowling in the day time. [1735]

Q. Now, in addition to this \$2200 a week you had a cost of administration under your arrangement with Marco Wolff of five per cent, didn't you?

A. I believe that was his figure.

The Court: Five per cent of what?

The Witness: Whatever came in to the box office.

The Court: You mean the gross?

The Witness: Yes.

Q. (By Mr. Mitchell): All right. Let us assume a gross of \$3600, and if you have a five per cent cost, you have \$180 a week administration cost, isn't that right?

A. That would be the figure that Mr. Marco Wolff would receive for administration and book-keeping, et cetera.

Q. Now, still assuming that same \$3600, a film rental of 35 per cent in that day and age was reasonable, was it not? A. Yes.

Q. So if you paid a film rental of 35 per cent——

A. Mr. Mitchell, if you don't mind the interruption, there would be a second feature deduction.

Q. Second feature deduction?

A. Before the 35 per cent.

Q. Before the 35 per cent. That is true. So that your second feature would run you around \$200 or \$300? A. Yes. [1736]

(Testimony of Alex Schreiber.)

Q. That would be \$1155 film rental plus your second feature which we assume would cost \$300 or \$1455, is that right? A. Film rental, yes.

Q. Film rental? A. Yes.

Q. All right. On that basis you have a break even point of around——

The Court: Mr. Mitchell, you have house expense of \$2200, and administration expense and film rental. Does the film rental come in on house expense?

Mr. Mitchell: No.

The Witness: That was in addition.

Mr. Mitchell: That was exclusive of cost of administration and exclusive of film rental.

The Court: Then what does house expense include?

The Witness: In our particular case we paid no rent. We owned our own building, so the house expense would include taxes, insurance, interest on the mortgage, salaries, electric lights, water, advertising. It included our auditor, and that runs up to \$2200.

The Court: All right. I wanted to make sure that was understood.

Q. (By Mr. Mitchell): So that means your break even point is somewhere around \$3800?

A. It would be in that case, yes.

The Court: That is for a week?

The Witness: Yes, sir.

Mr. Corinblit: It is based on the \$2200 figure which you will have to consider.

(Testimony of Alex Schreiber.)

The Court: It was a week's expense.

Mr. Corinblit: But that is not the actual house expense. This is just a figure which Mr. Mitchell is using.

The Court: That is what the witness testified to. He said \$2200. He said that at the outset there was a twenty-two hundred dollar figure.

Mr. Mitchell: For the first few months.

Mr. Corinblit: He testified that was at the outset.

The Court: Mr. Corinblit, my understanding is, and I think the jury is justified in coming to the same conclusion, that at the beginning the house expense was \$2200 a week.

Mr. Corinblit: "Beginning" is the key word.

The Witness: Right.

Mr. Mitchell: He may change his testimony now, but he said a few moments ago the first few months.

Mr. Corinblit: We have the profit and loss statements here in court. Mr. Mitchell has the profit and loss statements showing the actual expense for the full year and there is no question about it, but Mr. Mitchell wants to use a different figure. [1738]

The Court: He says the house expense at the beginning was \$2200. I don't know whether he said the first few months or not.

What do you mean when you say "the beginning?"

The Witness: At the beginning, when we opened up.

The Court: For how long?

(Testimony of Alex Schreiber.)

The Witness: I don't know. The reports would show that exactly.

Mr. Mitchell: Let us get his testimony, your Honor. He said for the first few months.

The Witness: It may have been for the first few months. I believe I said——

The Court: All right.

The Witness: When you open up in the beginning you have a lot of advertising, a lot of pre-opening expense that you don't have later on. You go on the radio and you spend a lot of money in the beginning so that, naturally, the auditor can't charge everything to the one week. He may spread it over three weeks or over a four-week period or maybe over a six months period. It is all according to what the money was spent for.

The Court: How long did that run? How many weeks were run to compute the \$2200 a week?

The Witness: I couldn't tell you exactly. You would have to look at the monthly statements of the auditor. I [1739] don't know—whoever has got it.

The Court: Are you limiting "in the beginning" the first week?

The Witness: I think it was longer—longer than the first week.

The Court: Was it longer than three weeks?

The Witness: It may have been.

The Court: Longer than three months?

The Witness: I don't think so, because with the

(Testimony of Alex Schreiber.)

amount of business which we were doing we couldn't continue with that much expense.

Mr. Corinblit: We will be glad to have the P and L statements go in at this time if Mr. Mitchell would like to put them in. They are here and he has copies of them.

The Court: He has a right to have this witness testify and I want to know what this witness meant.

Mr. Corinblit: Yes.

Q. (By Mr. Mitchell): At the last of November, 1950, you were telling Mr. Cohen that you house expenses amounted to \$2200 a week. See if you don't recall that.

(Handing document to the witness.)

A. Yes. This letter is dated November 27th, but that letter also states as of November 7, which was practically three weeks prior to that, which would then include September and October—two months. [1740]

The Court: Then this house expense you say included the payments on the loan or the interest on the loan. What was it? Was it interest on a loan?

The Witness: Yes, sir.

The Court: It didn't include any payments?

The Witness: Oh, no. Uncle Sam doesn't allow you to do that. Plus interest on the equipment that was bought on contract. [1741]

Mr. Mitchell: Do you have Plaintiff's Exhibit 45-J there?

Q. I am going to give you, Mr. Schreiber, Plain-

(Testimony of Alex Schreiber.)

tiff's Exhibit 45-J to have before you, please.

(Handing exhibit to witness.)

Now, you opened your theatre with a Warner picture named *Pretty Baby*, playing at the top half of the double bill, and a Republic picture, *Harbor of Missing Men*, playing at the lower half of the double bill, isn't that correct?

A. That is the opening attraction.

Q. We will just use W for Warner Bros. I am going to use R for Republic. Now, the gross on these pictures was \$1,875, wasn't it?

A. That's right.

Q. And the film rental which you paid Warner Bros. was \$600, right? A. That is correct.

Q. So that on those two pictures you didn't make your break-even point, did you?

A. No, we did not.

Q. The second picture you played was a Universal picture named *Desert Hawk*, wasn't it?

A. Yes, sir. But, Mr. Mitchell, you forgot to put the cost of the second picture that was played with *Pretty Baby*. You have it marked on there but you don't have the film [1742] rental.

Q. Well, that went to Republic. Republic isn't involved here. I am just concerned with what Warner Bros. got out of it.

A. The film rental that they got?

Q. Please, sir. Let's go on to the next. *Desert Hawk* was the second picture you played.

A. That is correct.

Q. That was a Universal picture?

(Testimony of Alex Schreiber.)

A. That is correct.

Q. I will mark that U. You held with that on the lower half of the double bill *Pretty Baby*, correct?

A. Yes. We couldn't get another picture.

The Court: You mean to say you couldn't get a picture of any kind?

The Witness: We couldn't get a picture that was suitable to play for the second week so we were compelled to hold the first week's picture over so we could have a picture the second week.

The Court: You couldn't get a picture that was three or four years old?

The Witness: Oh, yes, we could have got one three or four years old, yes, but when we open a practically \$500,000 building, a beautiful theatre, a fine theatre, we couldn't book a three- or four-year old picture. [1743]

The Court: Then when you say you couldn't get any picture, you weren't stating exactly the fact, were you? You could have got some picture.

The Witness: I apologize. We could have got some picture, yes.

The Court: But you couldn't get a picture you thought was suitable?

The Witness: That is correct.

Q. (By Mr. Mitchell): You could have got plenty of pictures at a 21 day availability?

A. I don't think so, not plenty.

Q. You didn't try?

A. I didn't try, no, because I was not booking

(Testimony of Alex Schreiber.)

the house. You would have to ask Mr. Wolff that, Mr. Mitchell.

Q. So far as this bill with Desert Hawk at the top of the bill, a Universal picture, you grossed \$2,139, didn't you? A. That is correct.

Q. You paid Universal a film rental of \$661.

A. That is correct.

Q. So that you didn't break even on that, did you? A. No, we did not.

Q. Now, your third picture that you played was Warner Bros.' Kiss Tomorrow Goodbye, along with Treble Trouble, a picture of Monogram's, is that correct? [1744] A. That is correct.

Q. And on that bill you grossed \$1,522, is that right? A. That is correct.

Q. And paid Warner Bros. a film rental of \$542?

A. That is correct.

Q. The dates on which you played that bill were from September 6 to 12, 1950, is that right?

A. That is correct.

Mr. Mitchell: We have here, your Honor, and under stipulation either party can use them, the various cut-off cards, which are recordations of information with respect to various theatres, and I would like to read into evidence from the Warner cut-off card involving the Rio Theatre, the gross and film rental paid by the Rio on this same picture for the same period of time. You can follow here, if you want to.

Mr. Corinblit: That's all right. You can read it. Your Honor, we have no objection to this. We pro-

(Testimony of Alex Schreiber.)

pose to offer all the cut-off cards in evidence, so I am agreeable to this reading.

The Court: That's all right. Let Mr. Mitchell read that into the record if he wants to.

Mr. Corinblit: Yes, sir.

Mr. Mitchell: Reading from Joint Plaintiff and Defendants' Exhibit D-2, marked for identification, I will read into evidence the gross of the Rio on this picture. [1745]

From September 6 to 12, 1950, the gross is \$1,908.39, and the film rental \$1,000.

The Court: Which picture was that, Mr. Mitchell?

The Witness: How much was the gross? [1746]

Mr. Mitchell: This is Kiss Tomorrow Goodbye.

Mr. Corinblit: Mr. Mitchell, before you go on, I would like to check those figures.

Where do you have this \$1000?

Mr. Westbrook: Right there (indicating).

Mr. Corinblit: Well, Mr. Westbrook has pointed out a place where the film rental terms are provided and not the payment.

I will not quarrel with that if we can get the fact verified that \$1000 was paid.

Mr. Mitchell: All right.

Q. Now, the next picture you played was Columbia Film Company's picture named In a Lonely Place along with Warner's Kiss Tomorrow Goodbye?

A. Correct.

Q. Is that correct?

A. Yes, that was another——

(Testimony of Alex Schreiber.)

Q. "Yes," answers it unless you want to say something. I don't know how you can explain that. The answer is "Yes."

A. I want to explain that the second picture with *In a Lonely Place* was held over from the week before because there was another place that we couldn't get a suitable second picture and if I may add that *In a Lonely Place* was one of those nervous pictures. [1747]

Q. Well, these companies can't make a winner every time, you know.

Mr. Corinblit: Mr. Mitchell, I am sorry, but I notice on *Kiss Tomorrow Goodbye* you have read the total film rental paid for the total run of the picture—that is for the next week.

Do you want to do that——

Mr. Westbrook: There is a statement of the gross and if you want the film rental and the gross, all right, but that one played flat rental.

Mr. Corinblit: I think we should have the complete picture.

Mr. Mitchell: I don't mind putting down here anything you want that is a fact. I was trying to show what the film rental was for a week to compare it with this break even point to show what kind of performance this theatre did. If you want to have the flat rentals in there for the second feature, certainly. It is just another figure, however. It does nothing so far as I am concerned to show what the theatre can do.

Mr. Corinblit: I don't want to prevent you from

(Testimony of Alex Schreiber.)

showing anything you want to show but I think you should be complete about the picture the second week it played.

Mr. Mitchell: I will put anything on here that is a fact that you want. What do you want on here?

Mr. Corinblit: Under the Rio. If you will put September 13 to 19, \$150 and that is all I want. That is the rental.

Mr. Mitchell: I don't understand what you are talking about. I am only interested in the one week of the Rio to compare it with the picture at the Paradise.

The Paradise for the picture Kiss Tomorrow Goodbye for one week gets \$1522. The Rio for one week gets \$1908.

I suggest I go ahead and you can write on my exhibit anything you want to.

The Court: Let Mr. Mitchell develop it as he sees fit and if you want to add anything to it or present another chart, you may do so.

Mr. Corinblit: All right, your Honor.

Q. (By Mr. Mitchell): All right. Now, the Columbia picture In a Lonely Place and the holdover of Kiss Tomorrow Goodbye, you grossed \$2125, isn't that right? A. That is correct.

Q. And you paid Columbia \$1500 film rental which was a guarantee that you agreed to pay, correct?

A. Paid them \$1500. I don't know whether it was a guarantee against a percentage or a flat \$1500.

(Testimony of Alex Schreiber.)

Q. All right. Now, I would like to offer in evidence from Joint Plaintiff and Defendants' Exhibit F-2 for identification, the performance of the Southside on this same picture at this same time. [1749]

There was a gross of \$4255 and a film rental of \$1500 which I am offering in evidence from that document.

The Court: It may be received.

The Clerk: Where is the document?

Mr. Corinblit: He is not offering it. He is only reading from it.

The Court: You are not only confusing the witness but you apparently have confused our clerk.

The Clerk: I am not confused.

The Court: You have offered something in evidence and we haven't a document.

Mr. Mitchell: With all my apologies to Mrs. Smith, just so the jury is not confused.

The Court: If you read it in, isn't that sufficient?

Mr. Mitchell: I didn't mean to offer it in evidence. I meant to read it in evidence. I just want to help take Mrs. Smith off of the hook.

The Clerk: I am not on a hook.

The Court: She was mumbling to herself.

The Clerk: No, I wasn't.

Mr. Westbrook: She was mumbling at me, your Honor.

The Court: I didn't know where the mumble was directed.

(Testimony of Alex Schreiber.)

Mr. Mitchell: May I have the cut-off card for the Fifth Avenue.

In order to save time I want to show and I will do so, [1750] your Honor, in a moment, that the Fifth—I will show this by evidence in just a moment, that the Fifth Avenue Theatre a week later after the Paradise and the Southside had been playing this picture for a week, grossed \$2000.

The Court: What rental did they pay?

Mr. Mitchell: I will give it to you in a moment. I have it here in my notes.

Mr. Westbrook: \$437.

Mr. Corinblit: Are you going to produce the cut-off card?

Mr. Westbrook: Yes.

Mr. Mitchell: Do you have the record from which we can—I will pass that until we get the records.

Q. All right. Now, the next picture you played was Warner Bros.' Tea For Two along with a second week of Columbia's A Lonely Place, is that correct? A. That is correct.

Q. And you grossed \$1585 and paid a film rental of \$1500, which was a guarantee, is that correct?

A. I don't know whether it was a guarantee against a percentage of a flat rental of that \$1500.

Q. You paid \$1500?

A. We did pay \$1500, yes.

The Court: May I ask a question?

When you keep these top half of the bill for the

(Testimony of Alex Schreiber.)

second [1751] week, do you pay a flat rate for the second week?

The Witness: We did in this case, yes. The second week they gave us the picture at a flat rental.

The Court: What did you pay the second week, if you paid \$1500 the first week, what did you pay the second week?

The Witness: We paid \$100 for Tea For Two for the second week, and we paid for Kiss Tomorrow Goodbye the second week \$200 and we paid for Pretty Baby the second week \$200. [1752]

Mr. Corinblit: I think we have got the exhibit in evidence. Mr. Schreiber, I will call your attention to the number of days for which you paid the rental.

The Witness: That \$100 for hold-over?

Mr. Corinblit: Yes.

The Witness: Three days.

Mr. Corinblit: All right.

Mr. Mitchell: Now, what do you say the cut-off card shows on the Fifth Avenue?

Mr. Westbrook: The Fifth Avenue?

Mr. Mitchell: On the 14 day availability.

Mr. Westbrook: \$1,892, instead of \$2,000.

Mr. Corinblit: For the gross?

Mr. Westbrook: Yes.

Mr. Corinblit: How much for the film rental?

Mr. Westbrook: 423 instead of 437.

Q. (By Mr. Mitchell): Your next picture is—you are still not making your break-even point, are you?

A. No, sir.

(Testimony of Alex Schreiber.)

Q. Now, the next picture that you played was Columbia's Convicted, along with Columbia's Petty Girl, is that right? A. That is correct.

Q. And on that bill you grossed \$1,327 and paid a film rental of \$530, is that correct?

A. That is correct. [1753]

Q. These are all on 7 day availability, aren't they? A. No, sir.

Q. Well, Convicted is on a 7 day availability.

A. No, sir.

Q. Where do you get that information?

A. From the exhibit you handed me, or Mr. Westbrook handed me.

Q. You say this is a 14 day? A. Yes, sir.

Q. Petty Girl is a 14 day? A. Yes, sir.

Q. Let's go back. Tea For Two is a 7 day, is that right? A. The first week was a 7 day.

Q. You only played it one week, as far as you know?

A. We played it the extra three days.

Q. A Lonely Place was a 7 day, correct?

A. 7 and 14. You have two weeks there, I believe.

Q. The first week you played it was a 7 day. You had another 7 day when you played it as the second half of the double bill.

When you played Kiss Tomorrow Goodbye at the top half of the bill, it was a 7 day picture, is that right?

A. Kiss Tomorrow Goodbye as the top half?

Q. Yes. [1754]

(Testimony of Alex Schreiber.)

A. We did not play *In a Lonely Place* with *Kiss Tomorrow Goodbye* when *Kiss Tomorrow Goodbye* was the top half.

Q. I am sorry. You misunderstood me or I misunderstood you.

A. We played *Treble Trouble*.

Q. Just a minute. Just listen to me a minute. When you played *Kiss Tomorrow Goodbye* at the top half of the double bill, it grossed \$1,522.

A. Yes, sir.

Q. That was on a 7 day availability?

A. Yes, sir.

Q. All right. We are going backwards. When you played *Desert Hawk* and grossed \$2,139, that was on a 7 day? A. Yes, sir.

Q. When you played *Pretty Baby*, the first picture that you played, that was on a 7 day?

A. That is correct.

Q. All right. Now, we are back to these two 14 day availabilities of Columbia.

Mr. Mitchell: I would like to offer in evidence——

The Court: Read it into evidence, Mr. Mitchell, rather than offer it.

Mr. Mitchell: All right. I would like to read into evidence from Plaintiff's and Defendants' Joint Exhibit F-3 again the gross receipts on this picture playing day and [1755] date at the Fifth Avenue. Gross, \$2,317, film rental \$316.

Mr. Westbrook: Oh, that is a mistake. That was a combination program of Columbia and they have

(Testimony of Alex Schreiber.)

recorded the total film rental for two pictures as the film rental of one picture.

Mr. Mitchell: All right. Let's get the comparison correct, then.

Well, on the film rental, Fifth Avenue, the cut-off card shows that it played the same program and the gross for the Fifth Avenue is correct, but when you add in the \$475 for Petty Girl and \$316 for Convicted, or a total of \$791, that is the film rental for the bill compared with 530 at the Paradise.

Mr. Westbrook: Those are comparable figures, counsel, are they not?

Mr. Corinblit: Well, that is what the record shows, \$530. We will check it out.

Q. (By Mr. Mitchell): Now, the next picture that you played was Paramount's Sunset Boulevard. A. That is correct.

Q. No complaint on that picture, have you?

A. No. That was the first A picture we booked in the theatre in seven weeks.

Q. That was a good picture?

A. In seven weeks that is the first picture we got. [1756]

Q. And you played that the first week with Universal's Saddle Tramp, right? A. Correct.

Q. That is not only a good picture, but that was one of the outstanding pictures of the year?

A. What was?

Q. Sunset Boulevard.

A. Oh, yes, that was a very good picture.

(Testimony of Alex Schreiber.)

Q. That is the kind you would like to play all the time?

A. That is the kind the Fox theatre people were playing all the time.

Q. And we will show you in a moment what they did with it, too.

Your film rental the first week, rather, your gross the first week was \$3,489, wasn't it?

A. No. Did you say 34—

Q. Yes. A. No, that is not correct.

Q. I have transposed the figure. \$3,849, right?

A. Yes. That's quite a difference.

Q. So with this top picture of the year, or one of the top pictures of the year, you were able to get \$249 above your break-even point, correct?

A. No. [1757]

Q. All right. The film rental that you paid on the picture for that week was how much?

A. \$1,339.

Mr. Mitchell: I would like to read from the Southside Theatre cut-off card, Paramount, gross \$4,668, film rental \$1,451. [1758]

The Witness: Mr. Mitchell, could I ask you to write a little bigger.

Mr. Mitchell: I will be glad to.

The Witness: Is that \$4668?

Q. (By Mr. Mitchell): You have given us the testimony and I will read it to you, but I mean the point is we are trying to tell the jury and not to have you and I argue. You just answer the questions that I ask.

(Testimony of Alex Schreiber.)

Sunset Boulevard grossed at the Paradise along with Saddle Tramp \$3489? A. \$3800?

Q. \$3849. The Southside grossed \$4668.

Now what other figures do you want?

A. The cost of the film rental of what the Paradise paid for the picture and what the Southside paid for the picture. I can't see that very well.

Q. \$1339 the Paradise for Sunset Boulevard; \$1451 the Southside. A. Okay.

Q. Now, that was on a 7-day availability that you played Sunset Boulevard. That is the first week, right? A. That is correct.

Q. And you went on and played it a second week?

A. And during the second week—just a moment.

Q. For the second week your gross went down to \$2709, [1759] right?

A. Yes. Could I explain something there?

Q. I don't mind, but that is the answer. The answer is "Yes," it went down. Do you want to explain why it went down?

A. No. I want to explain when we played it the second week, the second week of that "A" picture was more than the first week of any one of the other previous weeks because we had an "A" picture.

Q. And the second week of the "A" picture you didn't even reach your break even point. That is right, isn't it?

A. According to what you are calling the break even point.

Q. All right. Now, I would like to run through

(Testimony of Alex Schreiber.)

the rest of your, I believe, with your 7 day pictures.

You played a picture called Born Yesterday on a 7 day availability, didn't you?

A. Yes, March 14th to the 20th.

Q. And that was a Columbia picture, right?

A. Correct.

Q. Starring Judy Holliday?

A. That is correct.

Q. One of the real outstanding pictures of the year? A. It was.

Q. You played that picture for three weeks altogether, [1760] didn't you? A. Yes, sir.

Q. And the first week you grossed \$3718?

A. Yes.

Q. Is that right? A. \$3718.

Q. And the second week you grossed \$3014?

A. Correct.

Q. Now, because I have to make a comparison of two weeks, I don't mind the other information coming in, but I would like to keep this at a two-week period. Your total then for two weeks was \$6730 for your first two weeks, and your film rental for your first two weeks was \$2392, was it not?

A. The first feature, yes, for Born Yesterday.

Q. That is what I am talking about.

Mr. Corinblit: What is your figure, Mr. Mitchell?

Mr. Mitchell: \$2392.

Mr. Corinblit: Right.

Mr. Mitchell: Now, I would like to read into

(Testimony of Alex Schreiber.)

evidence what these other theatres did with this same picture.

Q. You played that day and date with the Southside, La Tijera and Imperial, is that right?

Mr. Corinblit: We will stipulate to that fact.

Mr. Mitchell: That is correct. [1761]

The Witness: Yes.

Mr. Corinblit: I do have that information. That was true for those two weeks.

Mr. Mitchell: That is my understanding. And do you have the Southside cut-off card on that, Mr. Westbrook?

We will take the La Tijera while we work out the other problem.

Q. Reading from Joint Plaintiff and Defendants' Exhibit F-3, it shows the gross at the La Tijera on this picture for two weeks was \$6079, paying a film rental of \$2059.

From the same exhibit it shows that the Imperial Theatre for two weeks grossed \$4320, and paid a film rental of \$1488.

Mr. Mitchell: Do you have some more crayon?

The Court: Mr. Mitchell, I have a dark pencil here if you wish to use it.

Mr. Mitchell: We have some here. I think we have to use a little heavier pencil than that, otherwise it doesn't show up.

We will have a Christmas celebration here. How the devil do you work this thing? We will go to green now.

Q. Now, do you have the Southside—this is ex-

(Testimony of Alex Schreiber.)

hibit what? The same exhibit shows that the gross at the Southside for the first week was \$4675 and for the second week was [1762] \$2385, or a total of \$7060, and a total film rental from the Southside first week, \$1683, and the second week \$747 or \$2440.

Now, Mr. Schreiber, do you recognize that what you have done here playing this in four theatres day and date at an average of around what—\$3300 or \$3400 in your theatre and \$3500 a week in the Southside and a little less than the other two, is that you cut up the patronage of the area so none of the theatres does very well. Isn't that true?

Mr. Corinblit: Objected to that as being purely argumentative.

The Court: Sustained.

At this time we will take another recess, ladies and gentlemen of the jury, and again it is my duty to admonish you not to discuss this case with anyone nor permit anyone to discuss it with you. You are not to express or formulate any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition, we will now recess until 3:20 o'clock.

(Short recess.) [1763]

The Court: Stipulate the jury is present and in the box?

Mr. Mitchell: Yes, your Honor.

Mr. Corinblit: So stipulated.

The Court: You may proceed.

Mr. Mitchell: I would like, also, for purposes of

(Testimony of Alex Schreiber.)

comparison, your Honor, to read into the record the gross of King Solomon's Mine, a Loew's picture, which played on a 7 day run exclusively in the Fifth Avenue Theatre.

Q. King Solomon's Mine, Mr. Schreiber, was also a very good picture, wasn't it?

A. I would say it was a bigger Picture than Sunset Boulevard or Born Yesterday.

Q. All right.

A. Or at least as good, if not bigger.

Mr. Mitchell: Can you give me from the situation reports there of the Fifth Avenue Theatre the gross for the first two weeks, and then we will get the whole four weeks.

Mr. Westbrook: The gross of the first two weeks exhibition at the Fifth Avenue Theatre was \$11,725.

Mr. Mitchell: And it played a total of four weeks, and what is the total four weeks gross?

Mr. Westbrook: The total four weeks gross was \$16,000 in round figures. I will give you the exact figure in just a moment. [1764]

Mr. Corinblit: Would you give us the dates, too, counsel?

Mr. Westbrook: Just a moment.

Mr. Mitchell: Do you have the four weeks gross there?

Mr. Westbrook: 16,000.

Mr. Mitchell: Round figures are near enough.

Mr. Westbrook: 16,000 and a few odd dollars.

Mr. Mitchell: Do you have the total film rental?

(Testimony of Alex Schreiber.)

Mr. Westbrook: The total film rental on the picture was \$8,657.

Mr. Mitchell: Say it again.

Mr. Westbrook: \$8,657.

Mr. Mitchell: The record shows that that played all together four weeks in the Fifth Avenue?

Mr. Westbrook: That is correct.

Mr. Corinblit: Before you go ahead, counsel, could we have clear, are these from the situation reports that are marked, or from some document which is not marked? If it is, I would like to have it marked so that it will be available to us.

Mr. Westbrook: They are available to you and we will be glad to show them to you after court.

Mr. Corinblit: Have they been marked for identification? [1765]

Mr. Westbrook: For the moment, I don't know whether these have been marked or not, but they are Loew's records which are available for your inspection.

The Court: Also, will you put on the board the dates when King Solomon's Mine played.

Mr. Mitchell: Yes.

The Court: I think Mr. Corinblit asked for the dates.

Mr. Mitchell: Yes. Have you got that?

Mr. Westbrook: Yes. 12/23/50 to 1/18/51.

The Court: King Solomon's Mine didn't play in the Paradise Theatre at all, did it?

The Witness: Your Honor, it played from December 23 to April 15, four months later.

(Testimony of Alex Schreiber.)

The Court: Four months later. All right.

Mr. Mitchell: This was a single bill on a 7 day availability in the Fifth Avenue.

Now, there is one other figure I omitted to put in here from the Southside cut-off card on Warners. Can you give me on Tea For Two the gross so that we can fill that in on Tea For Two?

Mr. Westbrook: \$2,998.

Mr. Mitchell: Say it again.

Mr. Westbrook: \$2,998.

Mr. Mitchell: And the film rental. [1766]

Mr. Westbrook: \$915.

The Witness: What theatre was that, may I ask?

Mr. Corinblit: Southside.

The Witness: The Southside.

Mr. Corinblit: That was on a double bill. Do we know what the other feature was?

Mr. Westbrook: If you will accept my statement, I can tell you.

Mr. Corinblit: All right, we will accept it, subject to check for correctness. Just the name of the picture is all I want.

Mr. Mitchell: While you are looking for it, I will move along here.

Mr. Westbrook: Tea For Two, at the time that Tea For Two was in the Paradise——

Mr. Corinblit: First week.

Mr. Westbrook: First week, In a Lonely Place, the second feature. It was at the Southside with another Columbia picture, When You Are Smiling. The Southside paid \$150 flat rental for When You

(Testimony of Alex Schreiber.)

Are Smiling, and the Paradise paid \$200 flat rental for In a Lonely Place. They are roughly comparable.

Mr. Corinblit: We don't have to have a comparison. Just the facts, counsel. [1767]

Q. (By Mr. Mitchell): Now, these other 7 day availabilities that you played, and you have it there on your exhibit, Mr. Schreiber, in April, 1951, Vendetta, an RKO picture.

You grossed on that picture about \$2000, and paid a film rental of \$616, isn't that right?

A. That is correct.

Mr. Corinblit: \$2003 that figure is, Mr. Mitchell.

Mr. Mitchell: You want the exact dollars? All right, \$2003 and \$1516 film rental.

Mr. Corinblit: Right.

Mr. Mitchell: I left one out here on May 4th to May 10th. You played Paramount's Samson and Delilah, didn't you? A. That is correct.

The Court: Was that a 7 day availability?

The Witness: Samson and Delilah, yes, your Honor.

I would like to make mention that I believe they called it a 7 day, but if I am not mistaken that had two road show playings prior to the—I believe originally, I am not positive, but I believe originally it came out and played for, oh, maybe four weeks or six weeks or eight weeks, and then it repeated again in the two Paramount theatres, I believe at popular prices the first run, and then the 7 day run. [1768]

(Testimony of Alex Schreiber.)

The Court: But this was the first time it had played in the Westchester area?

The Witness: I believe it was.

Q. (By Mr. Mitchell): That was a Cecil B. DeMille picture? A. Yes, sir.

Q. A topnotch picture as far as the box office was concerned?

A. In some areas it was a top picture, yes.

Q. Vendetta was 7 days, was it not?

A. I believe it was, but I would like to check it. Yes, it was.

Q. And you say Samson And Delilah—you say that that was the first time it played in the Inglewood area. That being true, it would be on a 7 day availability, isn't that right?

A. The first time it played in Westchester, yes.

Q. And on Samson And Delilah you grossed \$2291, is that correct? A. That is correct.

Q. And you paid a film rental of \$751?

A. That is correct.

Q. Santa Fe on May 7th to May 22nd, Mr. Schreiber, a Columbia picture?

A. Yes, sir. [1769]

Q. And you gross was \$1795?

A. That is correct.

Q. And your film rental was \$491?

A. That is correct.

Q. Brave Bulls in June, 1951. That was a Columbia picture? A. That is correct.

Q. And you grossed \$1690? A. Correct.

(Testimony of Alex Schreiber.)

Q. And paid a film rental of \$432?

A. That is correct.

Q. Hurricane Island, a Columbia picture in August, 1951? A. Yes.

Q. And you grossed \$778?

A. That is right. That was only four days.

Q. All right. Four days. I will mark that. And you paid a film rental of \$272?

A. For the four days, yes, sir.

Q. Let us go back just a moment. Santa Fe Brave Bulls and Hurricane Island were all 7 day availabilities, weren't they?

A. Brave Bulls was. Santa Fe on here it is six days, but I believe it was seven.

Q. Seven day availability, I mean. [1770]

A. Yes, yes, sir.

Q. That is what I meant on Brave Bulls, 7 day availability.

A. I thought you asked me——

Q. No, I am sorry. 7 day availability?

A. I believe so.

Q. If you can't find it, it is June 1951.

A. Brave Bulls. 7 day availability, yes.

Q. And Hurricane Island in August 1951 was a 7 day availability?

A. That is correct. That is the picture that played four days.

Q. And Sirocco in August of 1951 was also a 7 day availability? A. That is correct.

Q. And Sirocco grossed \$1850?

(Testimony of Alex Schreiber.)

A. That is correct.

Q. And paid a film rental of how much?

A. \$740.

Q. I think you played two pictures, two Columbia pictures and paid a total film rental of \$740 for both of them, didn't you?

A. They have no film rental alongside of Texas Ranger so I presume that may have been a combination.

Q. Texas Ranger also is a Columbia picture?

A. That is correct.

Q. And your total film rental was \$740?

A. That is correct.

Mr. Corinblit: Mr. Mitchell, you have a question with respect to Samson And Delilah. I think Mr. Westbrook has a point.

Mr. Mitchell: All right.

Mr. Westbrook: The fact is, the picture Samson And Delilah, contrary to Mr. Schreiber's testimony, had previously played a pre-release exhibition in the Inglewood area I believe a year or a year and a half prior to the time that this exhibition came up, but Mr. Schreiber is quite right. It had a regular release and played first run Paramount Downtown and then played the 7 day situations.

The Court: Where did it play?

Mr. Westbrook: I believe in the Academy Theatre. We can verify that fact. It was back in '49 or '50—early part of '50 or the latter part of '49. Is that correct, counsel, as you understand it?

(Testimony of Alex Schreiber.)

Mr. Corinblit: I will accept that statement subject to check. And I would want to get the amount of time it played in the Academy Theatre.

Mr. Mitchell: That certainly is available.

Mr. Corinblit: Fine. Thank you.

Mr. Mitchell: We have a comparison of Santa Fe. [1772]

Q. Did Santa Fe and Samson And Delilah—they played day and date? A. Yes.

Q. Day and date plays at the Century Drive-In as shown by which exhibit?

Mr. Westbrook: Plaintiff and Defendants' Joint Exhibit A-3. The gross receipts for one week play time, which was the same as the Paradise, was \$5667 and the film rental, \$1722.

Mr. Mitchell: Now, Mr. Corinblit, I believe you suggested that some statement of Mr. Schreiber's company showing the expense over the year period be admitted into evidence.

Mr. Corinblit: Yes. [1773]

Mr. Westbrook: Distributors' Exhibit 4.

Mr. Mitchell: I now offer in evidence Joint Distributors' Exhibit No. 4.

Mr. Corinblit: May I see it?

The Court: It may be admitted in evidence.

(The document referred to was received in evidence and marked Joint Distributors' Exhibit No. 4.)

Mr. Corinblit: The document to which I am re-

(Testimony of Alex Schreiber.)

fering is the P and L statement which you have and which is Exhibit 45-P-2 and 45-P-3.

Mr. Westbrook: I assume the tax return will show the same thing.

Mr. Corinblit: There are distinctions based upon accounting matters which the accountant will explain.

I think you will get a better figure and that that figure will be more helpful to you and to the jury.

Mr. Mitchell: I think the reports to Uncle Sam ought to be accurate. If not, we will find out.

Q. (By Mr. Mitchell): Now, this covers the period from the opening of your theatre until July 31, 1951, isn't that right?

(Handing document to the witness.)

The Witness: No.

Q. Well, what period do you say it covers?

A. August 1st to July. [1774]

Q. You didn't start operating until the 23rd of August, did you?

A. That is right, three weeks later.

Q. All right. So your expenses of operation started on the 23rd of August, right?

A. That is the actual operation, but the tax return is three weeks sooner.

Q. All right. But these are operational expenses we are talking about here.

Now, you show on this return expenses of \$128,297. Isn't that right?

Mr. Corinblit: Mr. Mitchell, I will object to the

(Testimony of Alex Schreiber.)

question. No foundation has been laid as to whether this report is kept on an accrual basis or cash basis and what period it covers.

Mr. Mitchell: He told me what period it covers.

Mr. Corinblit: But it has not been determined whether it was on an accrual or cash basis. I didn't want to you use these figures because they are just confusing without an accountant on the stand.

I have the P and L statements that are correct as to the money and I ask you to use them instead of this return.

I will object to the question unless we have a foundation laid. [1775]

The Court: Well, on what basis did you keep the income tax returns? Was it on a fiscal basis or on a regular year basis?

The Witness: This statement is August 1 to July 31. It is not the calendar year.

Mr. Corinblit: I am not talking about that, your Honor. I am talking about the difference between an accrual basis and a cash basis, where there are expenses in the income tax return which are from before for accounting purposes, but are placed in that period by reason of accounting practice as distinguished from a cash basis when you have got the actual expenses.

The Court: Do you understand the objection, Mr. Schreiber, that Mr. Corinblit is making?

(Testimony of Alex Schreiber.)

The Witness: Yes. He said our accountant can explain this better.

The Court: I am asking you if you understand these terms like accrual. Do you know what he is talking about when he says accrual basis?

The Witness: Not too much.

The Court: Do you know how those reports were made?

The Witness: No. I wouldn't want to guess that. That is an accountant's job.

The Court: I think possibly I better sustain the objection. [1776]

Mr. Mitchell: All right.

Mr. Corinblit: We have some P. & L. statements which I would be glad to have you put in and you can use them.

So that they will be in evidence, we will offer to put them in evidence, Exhibits 45-P-2 and 45-P-3.

Mr. Mitchell: All right. It will take just a moment to work out a different set of figures.

The Court: You want those two reports in evidence?

Mr. Mitchell: Yes, please.

Mr. Corinblit: Yes.

The Court: They may be received in evidence.

The Clerk: 45-P-2 and 45-P-3.

(The exhibits referred to were received in evidence and marked as Plaintiff's Exhibits 45-P-2 and 45-P-3.)

Mr. Mitchell: All right. We will try to work with these.

(Testimony of Alex Schreiber.)

Q. Now, your expenses would consist of, as shown here, \$113,900, we will use round figures, and \$11,100. You count the depreciation as part of the expenses in counting your cost of administration being \$2200? I mean the cost of expenses of operation, when you use the \$2,200 figures, it included depreciation, didn't it?

A. I don't know if that was included or not.

Q. You are the man who testified. You included, when you used the figure of \$2,200, you included the depreciation, didn't you?

A. I don't know. I didn't make up the \$2,200 figure, so I don't know if it is included or not. But it is included as an expense item.

Q. Let's include that as an expense item. That is a legitimate expense item, isn't it?

The Court: Mr. Mitchell, what is the period here?

Mr. Mitchell: This is the fiscal year August 1, 1950, to July 31, 1951.

Q. In order to get a comparison with the expense figure, because we took into consideration separately cost of administration, we have got to take that out of here in order to make a comparison. Here is your management and booking there. That is your cost. That is what you call your cost of administration, \$1,850, right?

A. Yes, I believe that is the administration figure.

Q. Also, since in your \$2,200 you didn't have film rental, we will take film rental out. That is \$34,800 is that right?

(Testimony of Alex Schreiber.)

A. Yes, sir. May I ask why you are taking out the \$1,850?

Q. Yes, because we are trying to make a comparison. I will trade places with you. I am willing to explain. [1778] A. All right.

Q. We are trying to make a comparison between the \$2200 with whatever this comes out to be, you see, for the whole fiscal year, and since \$2,200 didn't include either film rental or expense of administration, we have to take them out of this thing. Then we will add back in your actual film rental, and so on, see? A. But that necessarily isn't true.

Mr. Westbrook: Well, we will have apples and apples anyhow.

Mr. Mitchell: We will at least be comparing the same thing.

Q. With those two items out, with film rental and cost of administration out, we have a figure of \$88,500, right? A. Yes, sir.

Q. All right. Now, you were actually only open for three weeks less than this total period, isn't that right? A. That is correct.

Q. So you were really only operating for 49 weeks, isn't that true? A. That is true.

The Court: As far as that report is concerned.

Mr. Mitchell: Yes.

Q. Well, that comes out approximately \$1,800 expense over the whole period of operation as compared with your [1779] \$2,200 in your early months, correct?

(Testimony of Alex Schreiber.)

Mr. Corinblit: That is when you are dividing by 49 instead of 52.

Mr. Mitchell: That's right.

The Witness: That is right.

Mr. Mitchell: I would like to offer in evidence, your Honor, the sheets on which we have recorded this break-even point, and the grosses and **film rentals** and comparisons with other theatres, as shown by testimony of Mr. Schreiber, and the material read from other documents.

Mr. Corinblit: Your Honor, I will object to that on the ground, in the first place, it is nothing but pure argument on the board. But, secondly, that the figures are just terribly distorted. It may be you will want me to go over——

The Court: The witness testified that those are all in the record.

Mr. Corinblit: Yes, sir.

The Court: What difference does it make whether these documents are in or not?

Mr. Corinblit: Then may I be given leave to use these exhibits in order to show the facts?

The Court: Certainly you can use the exhibits.

Mr. Corinblit: All right.

The Court: They may be admitted in evidence.

The Clerk: Joint Distributors' Exhibit S. [1780]

(The exhibit referred to was received in evidence and marked Joint Distributors' Exhibit S.)

Mr. Mitchell: That's all I have, your Honor.

(Testimony of Alex Schreiber.)

The Court: Well, Mr. Mitchell, are you through with your examination of this witness?

Mr. Mitchell: Yes, sir. [1781]

* * * * *

Cross Examination

Q. (By Mr. Johnston): Mr. Schreiber, during the course of your direct examination you mentioned a Mr. Sam Decker. Mr. Decker was a friend of yours from your Detroit days, isn't that correct?

A. That is correct.

Q. Didn't you tell Mr. Decker here in Los Angeles about in the early part of 1949 that you wanted to affiliate the theatre you were going to build in Westchester with the United [1787] Artists Theatres Circuit?

A. Never. Never told him that.

Q. You never at any time told him anything of that character? A. No, sir.

Q. Did you about at this same time, Mr. Schreiber, ask Mr. Decker if he could introduce you to someone in the United Artists Theatres Circuit?

A. No, sir.

Q. You never at any time made any such request of him? A. No, sir.

Q. Isn't it a fact, Mr. Schreiber, that Mr. Decker told you at about this time that he was not well acquainted with the people in the United Artists Theatres Circuit, but that he would talk to his friend Irving Epstein, who might be able to in-

(Testimony of Alex Schreiber.)

introduce you to somebody in the United Artists Theatres Circuit?

A. No, sir. There never was a word like that ever spoken.

Q. Mr. Decker did introduce you to Mr. Irving Epsteen, did he not? A. He did.

Now, with respect to your meeting with Mr. Joseph Schenck which you have testified about, Mr. Epsteen's interest in that matter was simply as a mutual friend of yours and [1788] Mr. Schenck, isn't that correct?

A. Only insofar as commission was concerned.

Q. You recall, of course, giving your deposition in this case, do you not? A. Yes, sir.

Mr. Johnston: May I have Mr. Schreiber's deposition?

Mr. Corinblit: Yes, sir.

Mr. Johnston: Has it been filed here?

Mr. Corinblit: Right here, counsel. What page?

Mr. Johnston: Volume 1, page 30. May I show this to the witness?

Mr. Corinblit: Certainly.

Q. (By Mr. Johnston): I am going to place your deposition before you and if you will look at it, please, on page 30, line 25, and read through page 31 to line 7.

A. All right.

Q. You so testified on the occasion under oath when your deposition was taken, did you not, Mr. Schreiber?

(Testimony of Alex Schreiber.)

Mr. Corinblit: Is your question whether or not he gave the answers indicated on those pages?

Mr. Johnston: I think my question speaks for itself.

Mr. Corinblit: Your Honor, I object. The question is ambiguous. I don't know whether Mr. Johnston is now going [1789] back to the original question.

The Court: Read the question.

(Question read.)

The Court: Overruled.

The Witness: Yes, these were the questions and my answers.

Mr. Johnston: I would like, if the court's permission is given me, to read the portion indicated, your Honor.

"Q. Did Mr. Epstein in any of these conversations before March 15, 1949, tell you what his interest in the matter was?

"The Witness, Mr. Schreiber: Mr. Epstein's interest?

"Q. Yes.

"The Witness: Strictly as a mutual friend.

"Q. (By Mr. Westbrook): He so stated to you?

"A. That's right. He wasn't looking for any money at all. He was to get no commission."

Q. Now, Mr. Schreiber——

A. Isn't that what I said, Mr. Johnston?

Q. Mr. Schreiber, the record will indicate what

(Testimony of Alex Schreiber.)

you said and it is not up to me to tell you what you have said.

A. It is confusing, because I thought that is what I said, and you just repeated it. [1790]

Q. Is it your testimony now that you deny that Mr. Epstein was acting as a mutual friend?

A. Insofar as commission was concerned, yes. That is what he told me. He didn't want no commission. He was a mutual friend.

Q. Thank you. Now, it was your understanding, was it not, that with respect to this theatre site you had in the Westchester area, that if a deal could be consummated with the United Artists Theatres Circuit that Circuit was to be the purchaser, isn't that right?

A. No, sir. I wasn't told who was going to be in the deal with Mr. Schenck. Mr. Schenck told me at the meeting that United Artists Theatre Circuit would operate it and we were discussing about the minority stockholders and he said that I had nothing to worry about; that they charged a set fee of five or five and a quarter per cent to run it. He told me that I had nothing to worry about. They would run it, but who would have the interest he did not tell me.

Q. Now, Mr. Schreiber, have you completed your statement?

A. However, Mr. Epstein and Mr. Schenck used the word "we" continuously or several times and

(Testimony of Alex Schreiber.)

“we” I took for granted that was Fox and Mr. Schenck.

Q. Your son Max Schreiber was present on the occasion of your meeting with Mr. Joe Schenck, was he not? [1791] A. That is correct.

Q. I am going to show you—perhaps counsel can show you your copy of Mr. Max Schreiber’s deposition. Do you have that, Mr. Corinblit, or do you have the original?

Mr. Corinblit: No, I am sorry I don’t, but go ahead. You can use the copy that you have. I won’t quarrel with that.

Q. (By Mr. Johnston): I am going to show you, Mr. Schreiber, your son Max’s deposition and I am going to ask you to read on page 244, lines 14 through 17. Let me know when you have finished reading it and I will put my question to you.

A. How far down do you want me to read, Mr. Johnston?

Q. To line 17, just that portion which is bracketed. A. All right.

Q. Now, does a reading of that refresh your memory that United Artists Theatre Circuit was to be the purchaser if an agreement could be arrived at? A. No, that was not my understanding.

Q. All right. Then, will you look at your own deposition——

Mr. Johnston: Your Honor, I should like to read the deposition of Mr. Max Schreiber as an admission of an officer of the plaintiff corporation at this time.

(Testimony of Alex Schreiber.)

Mr. Corinblit: Object to that. There is no [1792] foundation laid. This matter is hearsay with respect to this witness.

The Court: I know, but you don't deny that Max Schreiber was an officer of the corporation?

Mr. Corinblit: No, your Honor. But if your Honor would establish this rule we can make use of it as well as they can—that is, when one person is on the stand you may use the deposition of another person because that other person is an officer of a corporation.

The Court: Ordinarily you can't use such a deposition and you can't impeach a witness by such a deposition. The only question, however, is, does that refresh your memory as to what he said.

The Witness: No.

Mr. Corinblit: Mr. Johnston is offering to read a portion of the deposition into evidence and I object to that.

Mr. Johnston: May I read it, your Honor?

The Court: No, I kind of think the objection is good. When Mr. Max Schreiber is on the stand, then you can ask him the question.

Mr. Johnston: Will he be on the stand, Mr. Corinblit?

Mr. Corinblit: Yes, he will be on the stand.

Mr. Johnston: Very well, as part of your case.

Mr. Corinblit: Yes.

Mr. Johnston: All right. [1793]

Q. Mr. Schreiber, look at your own deposition

(Testimony of Alex Schreiber.)

then on page 32 at line 17 and read through page 33 to line 5. A. Starting with what line?

Q. On page 32, starting at line 17.

A. All right.

Mr. Johnston: May I read the portion indicated to the jury, your Honor?

The Court: I don't know.

Mr. Johnston: I have not put my question yet. I beg your pardon.

The Court: All right.

Mr. Johnston: I thought I had.

Q. Now, Mr. Schreiber, isn't it a fact that you knew and you were told that United Artists Theatre Circuit was to be the purchaser if an arrangement could be worked out?

A. That was never told to me and I didn't understand it that way.

Q. Now, I should like to read the portion indicated if I may.

The Court: As impeachment?

Mr. Johnston: Yes, as impeachment, your Honor.

The Court: Very well.

Mr. Johnston: And as an admission of the witness himself. I am reading the portion indicated at page 32, line 17. This is a question by Mr. Westbrook: [1794]

"Q. Now, do you recall anything else that Mr. Irving Epstein told you in the series of meetings that occurred prior to March 15, 1949?

"A. He told me that it looked like, with the separation between the United Artists Theatres

(Testimony of Alex Schreiber.)

and the Fox Theatres, that there were going to be, he thought, some people that would leave the Fox Theatre group of theatres and were going over with Schenck, and that Schenck was going to take a more active part in the United Artists Theatres and they were going to get more theatres. They were going to add more theatres to their group of houses.

“Q. When you refer to they——

“A. United Artists Theatres group were going to add more theatres and they would like to have the Paradise in that group.”

Q. You so testified on the occasion of the taking of your deposition, did you not, Mr. Schreiber?

A. That is right. They were going to take it in a group and they were going to buy and book for the house. That is my answer. [1795]

Q. (By Mr. Johnston): Now, before your meeting with Mr. Schenck that you have testified about, you were attempting to interest other people in the purchase of the Paradise Theatre, isn't that right? A. That is not true.

Q. Had you discussed with any other people the matter of acquisition of an interest in your theatre or theatre site?

A. The Paradise Theatre site?

Q. Yes.

A. Yes, sir, the bowling alley and the theatre, I did.

Q. Who were those people? Were those Detroit people?

(Testimony of Alex Schreiber.)

A. They were mutual friends of mine from Detroit.

Q. Now, after this meeting that you have testified that you had with Mr. Schenck in 1949, you didn't attempt to verify through conversations with MGM people what Mr. Schenck had told you about getting MGM product, did you?

A. No, because Mr. Epstein told me that he wanted me to keep this strictly in confidence, he didn't want me to tell anybody, Mr. Schenck didn't want anybody to know about it.

This was that period of separation. They were going to separate. He didn't want nobody to know about it, that it was something between Mr. Schenck and himself and me—and Mr. Decker knew all about it.

Q. But in any event you didn't go to the Loew's people [1796] and tell them what Mr. Schenck had told you, is that right?

A. You mean go to Mr. Hickey or Mr. Aspell?

Q. Anybody at Loew's.

A. No, I did not.

Q. Now, later on in 1949 you reached a decision yourself to go ahead and build the theatre without any participation by United Artists Theatres Circuit, isn't that right?

A. Or Mr. Schenck, yes, sir.

Q. Or anybody else? A. That's right.

Q. Now, after that, some time after 1949, didn't you engage a Mr. William Toplikar as a real estate

(Testimony of Alex Schreiber.)

agent to try to find a purchaser or purchasers for the theatre for you?

A. There is no truth to that at all.

Q. You never engaged him as your agent to seek buyers for the Paradise Theatre?

A. Positively not.

Q. You never arranged with him to pay him a commission if he found a buyer for the theatre, the Paradise Theatre?

A. He talked about commission when he said he would bring me a buyer, I would have to pay him a commission. That is natural with any broker. You have got to pay him a commission. That is the way they make their living.

Q. Did you agree you would pay him a commission in the event he found you a buyer who was acceptable to you? [1797]

A. Yes, I agreed to pay him a commission prior to him bringing Eddie Zabel from Fox Theatres, Earl Collins from the Picwood Theatre, and Republic Pictures, and Eddie Granger from RKO, and an attorney to my house. He wanted an understanding that he was to receive, I believe he said \$10,000 if he made the deal.

I told him he had nothing to worry about commission, that every broker is entitled to commission, whatever the commission would be on the real estate board, he would be entitled to, and I would pay him, but I wanted to see the principals, who the purchasers were, and that was when he brought Mr.

(Testimony of Alex Schreiber.)

Zabel from Fox West Coast Theatres and the other gentlemen with him at my home.

Q. Did he ever bring any other purchasers to you?

A. No. The first time Mr. Toplikar brought a purchaser to me was at the Paradise Theatre prior to opening, prior to me going to the airport, returning to Detroit. He brought Earl Collins to the Paradise Theatre.

Q. That is the only purchaser, Earl Collins, and the other gentlemen who were with him, the only purchasers he brought to you?

A. Earl Collins was the first man that came to our theatre, because he said he wanted me to see the principal, and then later, as I said, the men came to my house and at one time, I think it was Mr. Toplikar, he brought Phil Isley [1798] to the theatre, to show him the theatre, and Mr. Isley made a recommendation as to what he thought I should do about hanging some curtains in the foyer.

And Mr. Isley was very much interested in our Academy Award board.

I am sure Mr. Toplikar brought Mr. Isley to the theatre.

Q. When you first talked to Mr. Toplikar about the Paradise Theatre, when was that?

A. I think Mr. Toplikar talked to my son and my wife at our home while I was in Detroit, and when I returned from Detroit, he was there at my house waiting for me.

(Testimony of Alex Schreiber.)

Q. And when was that, what month and what year, if you can place it?

A. Well, the group of men were at my home either the end of July or the first of August, and prior to that he brought Mr. Collins to the theatre, as I said before, before I went to Detroit, which would be about—I don't know. It would be about somewhere between the first of the year, I imagine, anywhere between the first of the year and the end of July, the first time I met Mr. Collins.

Q. That would be in 1950, wouldn't it?

A. 1950, that's right.

Q. Now, Mr. Schreiber, as a matter of fact, Mr. Toplikar was acting for you, not only in connection with your [1799] Paradise Theatre site, but with your theatre sites in the Valley, isn't that right?

A. Mr. Toplikar never acted for me. Mr. Toplikar was a broker. He was trying to make some commission, and he did some work, he told me, for Mr. Collins. He was very friendly with Earl Collins of the Picwood Theatre and the Republic Pictures.

Mr. Johnston: May I have Exhibit G-1, Joint Distributors' Exhibit G-1?

Mr. Corinblit: May I see it?

Mr. Johnston: Certainly.

Q. Mr. Schreiber, I am going to show you a document which is addressed to Mr. William Toplikar, dated September 29, 1950, and the name Alex appears, apparently as a signature, and I will ask you if that is your signature.

(Testimony of Alex Schreiber.)

A. That is my signature.

Q. You sent the letter of September 29, 1950, to Mr. William Toplikar, did you not?

A. September 29, 1950, that is correct.

Mr. Johnston: I should like to offer the document in evidence, if I may, your Honor.

The Court: It may be received in evidence.

The Witness: Can I read it?

The Clerk: Joint Distributors' Exhibit G-1.

(The exhibit referred to was received in evidence and marked Joint Distributors' Exhibit G-1.)

The Witness: All right. [1801]

* * * * *

Q. (By Mr. Johnston): Now, Mr. Schreiber, didn't you tell Mr. Toplikar that you didn't want to sell to the Collins group and that you preferred going ahead with Marco Wolff?

A. I did not tell Mr. Toplikar that at all. Mr. Toplikar was at my house when the men were there and I told them I wanted to talk to Marco Wolff the next day and I would give them an answer in less than 48 hours, whether I was going to go ahead with Marco Wolff, let him buy and book the theatre, or whether I would sell to the Ed Zabel and Eddie Granger group.

And in less than 48 hours, I told them I decided to go with Marco Wolff.

Q. You told Mr. Toplikar that, didn't you?

A. Yes, so he could convey it to his people.

(Testimony of Alex Schreiber.)

Mr. Johnston: Thank you. I have no further questions.

The Witness: What about that letter you just read, Mr. Johnston? Don't you want to know a little more about that [1802] letter?

The Court: Mr. Johnston will ask you any questions he wants to ask.

Mr. Johnston: Maybe Mr. Corinblit will ask you questions about it.

The Court: Mr. Corinblit will ask you the questions. [1803]

Redirect Examination

Q. (By Mr. Corinblit): I will place before you, Mr. Schreiber, Exhibit 45-J, which is the play-off of the Paradise Theatre.

Mr. Schreiber, first a few general questions. With respect to the gross receipts that a theatre takes in on a double bill, in the theatre business do you ascribe any box office importance to the—do you ascribe box office importance to only one picture or both pictures?

A. The important thing is always the first picture and the other picture that runs on the same bill or the double bill is what they call a companion picture.

It seems that in the last ten or fifteen years double features around the entire United States have been successful.

It isn't something that the exhibitors wanted. It was something that the public wanted.

(Testimony of Alex Schreiber.)

Q. Now, with respect to the second feature, I take it there is no quarrel that your gross receipts at the box office are going to be better if you have got a big second feature than a small one?

Mr. Mitchell: I object on the ground the question is leading and suggestive. This is redirect. It should be confined to the cross examining questions, and it shouldn't be leading.

The Court: Well, I don't know. This is cross examination. [1804]

Mr. Mitchell: This isn't cross examination. This is his own witness and he should be required to ask proper questions and not lead him—that is, put words in his mouth.

The Court: It is not cross examination in that respect, but evidently he is going to ask some questions on subjects which were raised by the defense.

Mr. Mitchell: There is no question about his right to do that. I just don't think he should put the words in the witness' mouth.

The witness has just said that the important thing was the first feature. Now counsel has twisted that around by his own question in order to compel the witness to state something entirely different. I think the witness should testify on his own and he should not, with his own witness, be permitted to ask leading questions.

The Court: All right. Rephrase your question, Mr. Corinblit.

Mr. Corinblit: All right, your Honor.

Q. Mr. Schreiber, would you describe the com-

(Testimony of Alex Schreiber.)

parative importance, box office-wise, where you have a strong second feature as against having a weak second feature?

A. Well, looking at these titles of the pictures here, if you take a picture like *Tea For Two* and run that double bill with a picture *Sunset Boulevard*, you will do a far greater business than you would if you played *Sunset Boulevard* [1805] with *Pretty Baby* or *Harbor of Missing Men* or *Fireball* or *Wyoming Mail* or *I Will Get By*.

And if one theatre is playing *Sunset Boulevard* and—what did I say the other picture was—*Born Yesterday* on one bill or two of those “A” pictures and the other theatre is playing *Harbor of Missing Men* and *Fireball*, the one theatre could practically put out a sign, “Gone on vacation.”

Q. Now, would you also describe in the theatre business the impact on the theatre’s operation where one picture is played—a theatre that has an availability of 7 days and the second feature has an availability of 21 days, what effect does that have on the box office?

A. Just common sense will tell you that. If a person wants to go and see a picture and they want to see—well, I will use the title here *Sunset Boulevard* and *Sunset Boulevard* is playing, say, for instance, a 21 day *Harbor of Missing Men* at the *Paradise* and *Sunset Boulevard* would be playing three or four miles further away at another theatre playing with an “A” picture like *Kiss Tomorrow Goodbye* or *Tea For Two*, they are going to go

(Testimony of Alex Schreiber.)

where the better program is. They wouldn't go back to the theatre that is playing the 21-day picture because they may have seen that 21-day picture at one of the other theatres. So they are not going to go into the Paradise and sit through a 21 day [1806] picture that they had already seen in order to see the other picture. That is clear because they can go to another theatre where they are playing two top "A" pictures and they hadn't seen either one.

Q. All right. Now, that is two factors. Now, will you describe with respect to the third factor, what effect on the box office gross is recognized in the motion picture business in the following situation. In week No. 1 you play picture A and picture B. The second week you carry over picture A as the second feature and bring in a new feature as the top half of the bill. In other words, the second time on the second week the bill has a picture, one of the two which has already played the week before. Would you describe to the jury what box office impact that kind of practice has?

A. I would say—I know a lot of these questions—if you played a picture A and picture B the first week and you gross \$1500 or \$2000 or \$2500 that week, now, the next week you come back with what is supposed to be a new program—you have a new picture, not an "A" picture. It may be a new picture but that picture may be a "C" or a "D" that we were able to get, and you told over the picture that was the "A" picture the first week to the second

(Testimony of Alex Schreiber.)

week, well, you are immediately eliminating the \$1500 or the \$2000 or the \$2500 that had been in the previous week. They are not [1807] going to come and pay you another sixty or seventy or eighty cents or a dollar admission to come back the next week and see one of the two pictures that they had paid sixty cents or seventy cents or eighty cents or a dollar to see the week before. They are not going to come back. If they do have the time and want to take the children out to the movie or the husband and wife want to go to the movie or the boyfriend and girlfriend want to go to the movie, they are not going back to the theatre where they had been the week before to see the one picture where they can drive elsewhere and see two pictures they hadn't seen before.

Q. Now, finally, Mr. Schreiber, in comparing theatre grosses, if you compare theatre grosses, one theatre with a second theatre and the second theatre has a give away in the Inglewood-Westchester area, what effect on box office did the practice of having give aways have during that period? Incidentally, the Paradise didn't have give aways, is that right?

A. No, sir. [1808]

Q. What is the effect of give-aways?

A. When we first came here and we made this buying and booking arrangement with Marco Wolff, Marco Wolff had at that time, I think, six theatres, might have been eight. I don't remember exactly.

Being curious, when I noticed the advertising in this theatre lobby, because he took me around, he

(Testimony of Alex Schreiber.)

or his brother Roy took me around to the various theatres that they owned, wanted me to see the theatres, and I noticed in the theatre big advertisements, we call them 40 x 60 boards, that is almost the size of this map here, 40 x 60 advertising, and you have frames in the theatre lobby. I noticed he had advertising about cash give-away, come every Wednesday or Thursday or Tuesday, whatever night it was. Some theaters had it twice a week. Win the jackpot or win the keno prize or the bingo prize, or win a cash prize of \$1800, or \$2500 or a thousand.

Each week there was no winner—it was one of those games where you pick out the fifth number and if your name was the fifth number, you win the jackpot, and they have a telephone service going to all their theatres, they have the telephone line open, and they call the name of the party and if the party isn't around, the next week they add \$50 to the prize. If it was \$1100 and nobody answered the name, the next Tuesday or the next Thursday, whatever day it would be, [1809] it would be \$1,150, and if nobody came in the next week, then it would be \$1200.

That thing spread all over town, when I came here, and on the nights that happened, it packs the theatre to capacity. That is why the theatres wouldn't give it up.

When Marco Wolff asked me if I wanted to put the Paradise Theatre in with his group in this cash night, and I would pay my proportionate share of what they gave out each week, and I could join

(Testimony of Alex Schreiber.)

with his theatres in that way, I told him I didn't go in the theatre business, or words to that effect, and build a \$450,000 theatre to give money away. The theatre was too beautiful for that. We wanted pictures, and I am sure with pictures the public would come to see the pictures and never mind the cash.

That was the same period that the Skouras theatres, Fox West Coast, were giving away every Wednesday, they would have a group of maybe 15 or 20 theatres in this end of town, and they would give away a Chevrolet car one week, and maybe the next one they would give away a Hudson car, and maybe the next month they would give away a Ford, and alternated it between the weeks or months, if they didn't give an automobile away, they would give a thousand dollars in cash.

They had 25 theatres that participated in that one automobile over here.

Then over here they used maybe 15 theatres, and [1810] among those 15 theatres they would give away an automobile or cash.

Then over here they would use maybe 10 theatres, according to the size of the theatres and how they would allocate the costs, and give away a car or cash.

So on Wednesday night, you go to practically any Fox West Coast theatre, I am almost positive it was on a Wednesday night, and you had a chance to win an automobile.

If you didn't win an automobile, it would be car-

(Testimony of Alex Schreiber.)

ried over, and they would add more cash to it the next week.

They were being investigated because of the lottery, and they tried to show that this give-away was a lottery and to stop it——

Mr. Johnston: I move to strike the comment of the witness as being a conclusion and not a statement of fact.

The Court: It may go out.

I would like to ask, Mr. Corinblit, a question.

Mr. Corinblit: Yes, sir.

The Court: Assuming there was a give-away policy, is that any indication of any conspiracy of any kind?

Mr. Corinblit: No, sir. That is only a foundation question.

The Court: What difference does it make?

Mr. Corinblit: There is only one reason. When Mr. Mitchell, and we are going to go into each picture, when [1811] Mr. Mitchell put on this chart these pictures and made comparisons between the Paradise Theatre and, for example, the Rio Theatre and the Paradise, or the Southside and the Paradise, the Fifth Avenue and the Paradise, in order to give the impression that the Paradise on the pictures wouldn't compare in grosses, Mr. Mitchell did not tell the jury that one of the days involved in every picture involved a cash give-away, or a give-away. He didn't tell the jury that the first feature at the Paradise was the second feature at the other theatre. He didn't tell the jury that

(Testimony of Alex Schreiber.)

we were playing a second feature with 21 days availability and the other theatre was playing two top bills.

That is the point of this question, your Honor. It has nothing to do with conspiracy. It has to do with the exhibit that Mr. Mitchell put in evidence.

The Court: The Paradise Theatre could have introduced a give-away, give away money or even given away the theatre.

Mr. Corinblit: That is correct, but that is not the point. This is redirect examination only devoted to a very narrow point here, and that is this exhibit Mr. Mitchell prepared last Friday without completing the information that is material. I think we can move through it quite quickly, your Honor.

Mr. Mitchell: It doesn't have anything to do with [1812] it. It shows certain theatres can do better and did better than the Paradise. If they can do it by skillful showmanship, they can do better, they can return more money to the distributor. All I was showing is that by skillful showmanship, whether it be by give-aways, buying better pictures, or what-not, that these other theatres can do better than this one.

Mr. Corinblit: Your Honor, I think in all fairness we are entitled to put this matter in. I think we are entitled to go into it.

The Court: You can proceed.

Mr. Corinblit: Yes, sir.

The Court: I wanted to know just where the

(Testimony of Alex Schreiber.)

give-away angle came in on this conspiracy charge.

Mr. Corinblit: Yes, sir.

Q. The first picture Mr. Mitchell used was Pretty Baby and Harbor of Missing Men. I hope the jury will pardon my handwriting. Pretty Baby was on what availability, Mr. Schreiber, from the exhibit? A. 7 days.

Q. What availability was the Harbor of Missing Men?

A. It is marked here 21 days, but it played——

Q. I will underscore the 21 days, that being something not present on Joint Distributors' Exhibit F.

The second picture Mr. Mitchell used was Desert Hawk and Pretty Baby. This was one of those situations you described [1813] earlier, was it, Mr. Schreiber, in which the first feature from the prior week was carried over as the second feature the following week, isn't that right?

A. That is correct.

Q. All right. This is a carry-over——

The Court: Was Desert Hawk in your opinion a Grade A picture?

The Witness: A great A picture?

The Court: A Grade A.

The Witness: Oh. I'm sorry. No, I wouldn't say it was a Grade A. I would say it was a B picture. It is according to how many grades you are going to have, A, B, C, D, E, F, or A, B, C, or A, B.

Q. (By Mr. Corinblit): The third group, Mr.

(Testimony of Alex Schreiber.)

Schreiber, that Mr. Mitchell used was Kiss Tomorrow Goodbye and a picture, Triple Trouble.

Then Mr. Mitchell compared gross receipts, but before we do that—well, yes, let's put that down. The Rio, he said, had the same bill.

Mr. Corinblit: Will you get me the tear sheets?

Mr. Westbrook: What do you mean by tear sheets, counsel.

Mr. Corinblit: We have the newspaper ads.

On Triple Trouble——

Mr. Westbrook: Is it the same bill? [1814]

Mr. Corinblit: I think it is.

Q. On Triple Trouble, Mr. Schreiber, what does your list show the availability of Triple Trouble was? A. 21 days.

Mr. Westbrook: 21 days at both theatres.

Mr. Corinblit: Just a minute. 21 days. Now, will you get the tear sheet, please, for September 13th and September 14th. I'm sorry, the tear sheet for September 7th.

Q. Mr. Schreiber, for September 7th, would you read, please, the entry in the newspaper——

Mr. Mitchell: After all, your Honor, we just can't try a case by newspapers. That is hearsay of the first order.

Mr. Corinblit: Mr. Mitchell, I will ask you to stipulate, after you have looked at the tear sheet in the newspaper, that there was a give-away at the Rio Theatre on September 7, 1950. Will you so stipulate?

Mr. Mitchell: I object to that as being immate-

(Testimony of Alex Schreiber.)

rial, whether there was a give-away or not, your Honor. There is no law against give-aways. We can have give-aways. We can have pretty girls at the box office.

The Court: I know, but you compared the two theatres, and you are trying to show one is worse than the other. I think the other side should have a right to show why it was better in one than the other. Objection overruled as far as materiality is concerned. [1815]

Mr. Corinblit: Will you examine this, Mr. Mitchell, and see if you can stipulate to this fact and not require us to call a witness.

Mr. Johnston: Aren't you going to call the witness, anyway?

Mr. Westbrook: I don't understand this. It is a one-line advertisement. I don't understand what it means and I don't think Mr. Mitchell does, either.

Q. (By Mr. Corinblit): Mr. Schreiber, in the business where there is an advertisement using the word "Play," p-l-a-y, what does that word mean in the business?

A. It can mean they are going to play bingo, they are going to play keno, or have a cash night, give away an automobile, or other terms they use in addition to that, "Come Early," because the newspapers wouldn't accept, because of interstate commerce, or this lottery law, they wouldn't let you put cash give-away in the papers.

They also used to use the term Latest Newsreels, and people would know if they saw the ad like that,

(Testimony of Alex Schreiber.)

Newsreel or Play or Come Early, that that was a subterfuge—is that the word—they would use for give-away. [1816]

The Court: I don't know about that. We have 14 people on the jury and I suppose every one of these 14 people are old enough to have gone to a motion picture theatre in 1949, '50 and '51. We have 14 people who are from all parts of the city and who live under all circumstances, but I doubt very much if any one of them has ever had this experience—ever had the experience of reading something in a newspaper that would indicate what is going on. It is purely speculative as far as this witness is concerned as to what that means.

Mr. Corinblit: No, no, your Honor. The word “play” in the theatre business has a specific meaning.

The Court: He has gone further than “play.” He didn't limit his explanation to the word “play.”

Any of us can look up Mr. Webster who can tell us what the word “play” means.

Mr. Corinblit: Beyond his description of the word “play” it is true——

The Court: What he is saying is that when they see something in a newspaper it means so and so.

Mr. Corinblit: If the word in the business and in their advertisements has a common accepted meaning that is something else. It is like asking what the word “clearance” means.

The Court: He is testifying as an exhibitor as to what [1817] the word means to the viewers. He is

(Testimony of Alex Schreiber.)

not a viewer. He can't testify as to what the viewers understood by the meaning of a certain word.

Mr. Corinblit: Your Honor, your point is well taken and I will confine the question.

Q. Mr. Schreiber, I want you to answer these questions only in the terms of what an exhibitor means—what his understanding of that term is with respect to exhibitors.

Mr. Corinblit: Now, Mr. Mitchell, could we stipulate that the word "play" appears herein so we can put it in the record, or do we have to get a witness or the people who put this in and have them come to the jury and testify, because there is no quarrel about this practically, really—I don't think there is.

Mr. Mitchell: I never heard of it before, to tell you the truth. I had not the faintest idea of any such thing.

I supposed the pictures played and the people could do various things to attract customers. I haven't the faintest idea of it. I never heard of it before. I never saw an ad use the word "play" and I don't know what it means and I am not prepared to stipulate until I know more about it.

Mr. Corinblit: All right. I don't think I need to go any farther on that one.

Q. Now, the next picture Mr. Mitchell used was the picture *In A Lonely Place* and *Kiss Tomorrow Goodbye*. Now, [1818] with respect to the picture *Kiss Tomorrow Goodbye*, that was one of these

(Testimony of Alex Schreiber.)

holdovers that you described before, isn't that right, Mr. Schreiber?

A. Yes. That is from the week before that you had down there.

Q. Now, in addition to that fact, Mr. Mitchell also compared the following—made the following comparison. He compared the gross of the Paradise, which was \$2125 with the Southside which was stated to be \$4255 and he made another comparison which we will come to in a minute.

Now, with respect to the comparison to the Southside——

Mr. Corinblit: Mr. Westbrook, if you have the play-off, will you stipulate with me the following facts: That the picture *In A Lonely Place* played the first two days, Wednesday and Thursday, with the Fox picture *Broken Arrow* which was a percentage picture, and played for the last five days with the Fox picture *Black Rose* which was the top half of the bill. Will you stipulate to that?

Mr. Mitchell: With the rest of the facts. The first one was *Broken Arrow*.

Mr. Corinblit: Yes.

Mr. Mitchell: That was a holdover.

Mr. Corinblit: For two days, that is right.

Mr. Mitchell: So you didn't give quite all the facts. Now, let us get the rest of them. [1819]

The other picture was a percentage picture but the top rental was paid by *In A Lonely Place*.

Mr. Corinblit: That was for two days, and for

(Testimony of Alex Schreiber.)

five days you played the picture Black Rose and the picture Kiss Tomorrow Goodbye.

Mr. Mitchell: Didn't you also have, while we are getting down into all this minutia, didn't the Paradise also have a major studio prevue during that week?

Mr. Corinblit: I don't know, but I will be glad to check that fact for you.

Mr. Mitchell: We don't either of us have all the details apparently.

Q. (By Mr. Corinblit): Now, the tear sheet for the date September 15——

Mr. Mitchell: Now, your Honor, I object to the use of newspapers to try the case on the ground it is hearsay and presenting it before the jury is an improper use of hearsay. I object on that ground.
* * * * * [1820]

Mr. Mitchell: Your Honor, you asked for some figures. Using the cut-off cards that are marked for identification, I will give you company by company and then give you the total.

In the 1949-50 season, this was the number of pictures distributed:

Paramount, 25; Warners, 32; Loew's, 30; Universal, 36; RKO, 42; Columbia, 48; United Artists, 29; Twentieth Century-Fox, 33 making a total of 275.

In the 1950-51 season, Paramount, 26; Warners, 30; Loew's, 26; Universal, 32; RKO, 28; Columbia, 36; United Artists, 31; Twentieth Century-Fox, 42; a total of 251.

(Testimony of Alex Schreiber.)

In addition to those pictures, of course, you recognize that there was Republic, Eagle-Lion, Monogram, Allied Artists, and so on.

You also recognize with respect to some of these pictures, like RKO and Columbia, a lot of those are westerns that are really not suitable for the top half of a double bill.

Mr. Corinblit: Your Honor, with respect to the [1827] figures Mr. Mitchell mentioned, we will stipulate to those figures, subject to correction by both sides. Is that agreeable, counsel?

Mr. Mitchell: That is agreeable.

Mr. Corinblit: And Mr. Johnston?

Mr. Johnston: Yes.

Mr. Corinblit: Thank you.

It has been called to my attention that there is an error in the name of the picture that was played here. I think we ought to check this just a moment. This feature played here was *In A Lonely Place*, and that is the feature which was the top feature at the Paradise Theatre was played together with *Broken Arrow*, *Black Rose*. *Black Rose* was the percentage picture on the Southside bill.

The Witness: That is pretty small, Mr. Corinblit. I can't see it from here.

Mr. Corinblit: Mr. Mitchell also made a comparison with the Fifth Avenue Theatre. He pointed out the gross was \$1,892 a week later.

Now, on that, may I have the October 4th tear sheet? Having in mind Mr. Schreiber's statement, Mr. Mitchell, I wonder if you will stipulate to the

(Testimony of Alex Schreiber.)

language contained in here, "Come Early" in the Fifth Avenue for this date.

Mr. Mitchell: That isn't the date the picture [1828] played.

Mr. Corinblit: But the comparison you made, Mr. Mitchell, is for the week following.

Mr. Westbrook: It played in the Fifth Avenue one week—excuse me.

Mr. Mitchell: Our records show that the Fifth Avenue in the week following it played the same double bill as had played at the Paradise Theatre.

Mr. Corinblit: Yes.

Mr. Mitchell: In *A Lonely Place* and *Kiss Tomorrow Goodbye*.

Mr. Corinblit: That is right here.

Mr. Mitchell: And a week later would be—what is the date of the week later? September 19th to September 26th. Now, you have given me a newspaper of October 4, which hasn't anything to do with it, which only illustrates the lack of virtue of trying a case by newspaper.

Mr. Corinblit: I will check this.

All right.

Now, the next picture that Mr. Mitchell used was *Tea For Two* and *In A Lonely Place*, and at the Paradise compared it with the Southside gross for that week of \$4,255.

Will you stipulate with me, counsel—oh, that is not correct. *Tea For Two* grossed at the Paradise \$1,585, and he compared it with a gross of \$2,998 at the Southside. [1829]

(Testimony of Alex Schreiber.)

The bill at the Southside for that week, counsel, I think you will stipulate with me, was Tea For Two and Black Rose.

Mr. Mitchell: Black Rose was a hold-over.

Mr. Corinblit: For two days.

Mr. Mitchell: For two days.

Mr. Corinblit: And then a new picture, When You're Smiling.

Mr. Mitchell: When You're Smiling was a Columbia flat rental picture.

Mr. Corinblit: Right.

Mr. Mitchell: For which \$150 was paid.

Mr. Corinblit: Yes. When You're Smiling for five days and Black Rose, a Fox picture, for two days, and Tea For Two 7 days.

Now, In A Lonely Place, when it played with Tea For Two was a hold-over, wasn't it?

Mr. Mitchell: That was a hold-over, but that was a first-class picture and the other was a second grade picture, obviously.

Mr. Corinblit: I am just adding the facts that were not placed on here.

Mr. Mitchell: Sure. There are a lot of facts we could talk about. [1830]

Mr. Corinblit: The next picture that Mr. Mitchell used was Convicted and Petty Girl, and that was a comparison—this is the week I was looking for.

Convicted and Petty Girl was available—does your record show the picture Convicted and Petty Girl played at the Paradise?

(Testimony of Alex Schreiber.)

The Witness: 14 days.

Q. (By Mr. Corinblit): Which one, both of them? A. Both of them.

Q. These are both 14 day pictures? A. Yes.

Mr. Corinblit: Mr. Mitchell compared it with the gross at the Fifth Avenue, compared the grosses. The Paradise he compared a gross of \$1327 with a Fifth Avenue gross of \$2317. Now, may I have the October 4th——

Mr. Mitchell: The same double bill at the Fifth Avenue as played at the Paradise.

Mr. Corinblit: Yes.

The Court: Both on 14 day availability?

Mr. Corinblit: Yes.

The Court: In both theatres?

Mr. Corinblit: In the Fifth Avenue and the Paradise, that is correct. There is only one difference, and the difference is "Come early on Friday night."

Now, will you stipulate to that, Mr. Mitchell, "Come [1831] early to the Fifth Avenue Friday night" and not the Paradise?

Mr. Mitchell: Just a minute. If we are going into detail here, let us get the correct detail.

Mr. Corinblit: I think Mr. Mitchell did point out—no, I don't think he did——

Mr. Mitchell: This is just argument that he is now giving, your Honor.

Mr. Corinblit: There is one other fact I think we ought to have here. Would you give me the number of days at the Paradise? How many days

(Testimony of Alex Schreiber.)

did Convicted and Petty Girl play at the Paradise?

Mr. Mitchell: One thing at a time.

The Witness: 29th to the 4th.

Mr. Corinblit: How many days is that? Six days?

The Witness: Six days.

Mr. Corinblit: This gross is six days. Now, this is a Columbia picture at the Fifth Avenue—while they are checking that, I will get out another record. While this matter is being checked, there is one matter I think we can agree to.

Mr. Mitchell: I can't do but one thing at a time, I assure you of that, and not that very well.

Your Honor, subject to my objection to the use of newspapers, which I think is improper and is incompetent and hearsay, but for the sake of moving the thing along, there is [1832] an advertisement in the Examiner for October 4, 1950, a little one-fourth inch ad for the Fifth Avenue which says among other things, "Come early."

Mr. Corinblit: In addition to the "Come early," the Fifth Avenue gross that Mr. Mitchell put into evidence is for seven days, a full week. Let me check that to make sure. Seven days, and I am counting on my fingers, while Paradise gross compared with it is only six days.

Mr. Mitchell: That is correct.

Mr. Corinblit: Now, the next comparison made by Mr. Mitchell is the picture Sunset Boulevard and Saddle Tramp. The gross was \$3849.

Now, Mr. Mitchell made a comparison with the

(Testimony of Alex Schreiber.)

Southside. Now, I will take the—you will stipulate with me, counsel, that the bill at the Paradise for that week, Sunset Boulevard and Saddle Tramp, at the Southside Sunset Boulevard and My Blue Heaven, which was a Fox picture.

Mr. Mitchell: That is correct. And the flat rental for Saddle Tramp was \$500 and for My Blue Heaven was \$536.

Mr. Corinblit: But My Blue Heaven he bought on percentage and then converted it—35 per cent and converted it. It was bought on a percentage basis originally.

Mr. Mitchell: They paid a percentage on Sunset Boulevard but not on both.

Mr. Corinblit: Let us put the names of the pictures [1833] down. At least there is no argument about that.

Q. You remember the Twentieth Century-Fox picture My Blue Heaven, Mr. Schreiber?

A. I sure do.

Q. What was the box office quality of My Blue Heaven? A. Triple A.

Q. All right. A. And percentage.

Q. Sold percentage? A. Yes, sir.

Mr. Mitchell: Now, I want it established here that it paid \$536 flat rental.

Mr. Corinblit: Yes.

Mr. Mitchell: That is right.

Mr. Corinblit: Yes, sold percentage and paid a flat rental.

Q. Now, with respect to Saddle Tramp. The

(Testimony of Alex Schreiber.)

picture Saddle Tramp—what availability does your record show, Mr. Schreiber? A. 14 days.

Q. Do you know what availability My Blue Heaven had in the Southside Theatre?

A. I am almost positive it was a 7 day run.

Q. Well, in evidence is the schedule showing the Fox play-off in the Loyola Theatre. When did My Blue Heaven close [1834] at the Fox?

Mr. Mitchell: Didn't close at the Fox. It closed at the Loyola. It had already played the Loyola before it played the Southside.

Mr. Corinblit: When did it close in the Loyola?

Mr. Mitchell: October 3rd.

Mr. Corinblit: October 3rd it closed at the Loyola and the date when it opened at the Southside was October 5th, so it really was not 7 days availability—two day availability.

Mr. Mitchell: Two day availability.

The Witness: Two day availability. Practically continuous first run Los Angeles.

Q. (By Mr. Corinblit): Now, the picture Born Yesterday. I think we have all the theatres listed.

I don't think Mr. Mitchell made any more comparisons after that.

The Witness: Is that Vendetta, Mr. Corinblit? That's the first one? I believe it is. It is a little hard to see from here.

Mr. Corinblit: Yes. We are going to go through these now from a different point of view than before.

Q. Mr. Schreiber, what is your testimony with

(Testimony of Alex Schreiber.)

respect to the number of pictures, if you operated on first run, the number of top half pictures and the number of second features that you needed to operate successfully at the Paradise Theatre?

A. On a first run policy?

Q. Yes.

A. I was under the opinion that if we could have got first run pictures at the Paradise Theatre we could have operated very successfully with 35 to 40 pictures maximum of the grade of A, AA, AAA, percentage or B pictures for the top half.

Q. The top half, and then you would be playing double bill ordinarily, and that would require approximately the same amount of second features?

A. That's right. They could be the smaller pictures.

Q. Let's stop right there a moment. That is 35 to 40 top half and 35 to 40 second? [1836]

A. Better write a little bigger, Mr. Corinblit. I can't see that very well.

Q. All right. I am having trouble with this pencil. I think you can do this without even counting, but to make sure, from the defendants first in this case, from the defendant Loew's, how many first run pictures did you get? A. First run Loew's?

Q. During this period.

The Court: For what period?

Mr. Corinblit: August to September 1951.

The Witness: We didn't get any first run from Loew's.

(Testimony of Alex Schreiber.)

Q. (By Mr. Corinblit): From the distributor Twentieth Century-Fox, how many did you get?

A. Same number, none.

The Court: When you say first run, do you mean first run Los Angeles or first run Inglewood?

Mr. Corinblit: I am sorry, your Honor. With respect to first run Los Angeles.

The Court: They never got any pictures first run Los Angeles.

Mr. Corinblit: That's right, your Honor.

The Court: In fact, the testimony is they didn't get any pictures first run Los Angeles.

Mr. Corinblit: That's right, your Honor. [1837]

The Court: What are you putting it down for?

Mr. Corinblit: Mr. Mitchell put down a list of facts and no argument about it in the record, and it seemed to me we ought to have it down here.

Mr. Mitchell: Just put a big zero. That will cover it.

Mr. Corinblit: All right. All defendants zero. Fine.

Q. Now, turning for a minute to 7 day pictures, I think you testified you would need 35 to 40 top half and 35 to 40 second features.

The Court: He said if he had first run pictures Los Angeles. Now, do you mean to say on the 7 day availability you would need the same number of pictures or you would need more?

The Witness: Ordinarily you would need more, but we would have been tickled to get 35 to 40 seven day pictures, and we would have been successful.

(Testimony of Alex Schreiber.)

Q. (By Mr. Corinblit): Now, turning to the matter of top half pictures, Mr. Schreiber, I am now just talking about pictures that you played at the top half, without regard to whether they were suitable for the top half, but pictures you played at the top half, how many during the period August 23, 1950, to September 1951, did you get from Loew's?

Mr. Mitchell: Just a minute, your Honor. I think [1838] that is immaterial since he played a 21 day policy from at least January 1, 1951, to the end of March, didn't even try to get 7 day pictures during that period.

Mr. Corinblit: Now, that is Mr. Mitchell's testimony, your Honor.

The Court: Objection overruled. You can argue that to the jury when the time comes. I think he is entitled to testify how many top half pictures he played.

Q. (By Mr. Corinblit): On the 7 day availability, Mr. Schreiber, from Metro, how many did you get?

Mr. Mitchell: We will stipulate he did not get any. He wouldn't bid and he didn't get them.

Mr. Corinblit: Stipulation accepted, he didn't get any.

How about Paramount?

Mr. Mitchell: He played Sunset Boulevard and Samson and Delilah.

Mr. Corinblit: Two.

The Witness: Samson was not a 7 day picture.

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